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APPENDIX

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

## No. 72-822

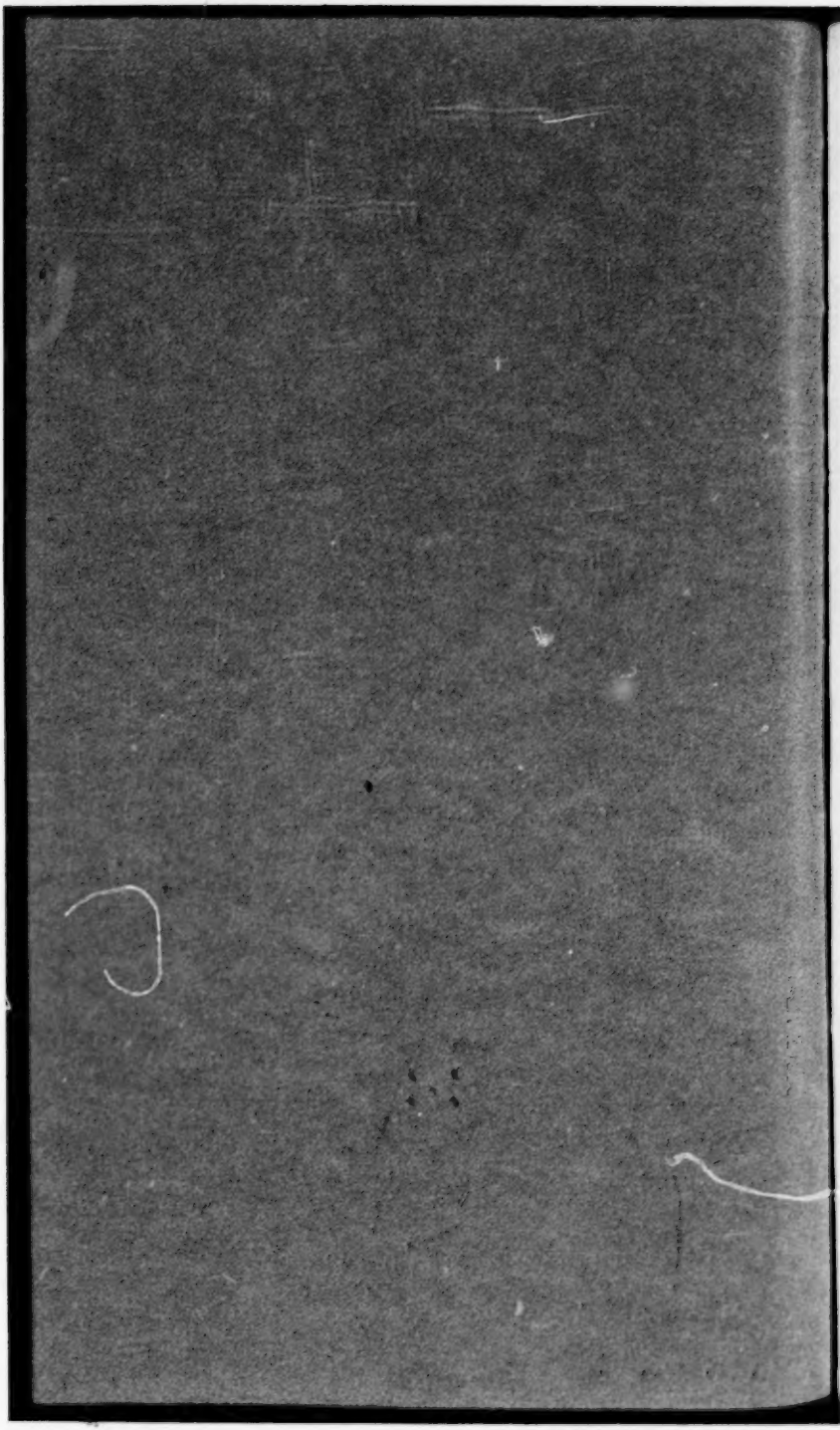
MARY LOUISE GREER PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED DECEMBER 26, 1972
PROBABLE JURISDICTION NOTED APRIL 2, 1973



# In the
# Supreme Court of the United States
OCTOBER TERM, 1972

No. 72-922

MARY LOUISE GREEN PASCHALL, JAN PASCHAL HARDEN, JOHN N. PASCHALL, JR., THE FOURTH NATIONAL BANK AND TRUST COMPANY OF TULSA, OKLAHOMA, as Executor of the Estate of H. Grady Ross, Deceased, and ZELDA DANNA PASCHALL,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., a corporation, R. W. GARRETT and R. H. VAUGHN,
*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

APPEAL FILED DECEMBER 26, 1972
PROBABLE JURISDICTION NOTED APRIL 2, 1973

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## DOCKET ENTRIES

### Supreme Court

| | |
|---|---|
| Dec. 2, 1969 | Ck. on Founders Natl. of Okla. City, # 1772/Andrews, Mosburg & Asso. — $50.00 |
| Dec. 2, 1969 | To filing Petition in Error |
| Dec. 2, 1969 | Issue Cert. of Appeal |
| Dec. 10, 1969 | Petrs. Notice of filing of Pet. in Error, etc. |
| Feb. 5, 1970 | Court Clerk's Notice of Completion of Record |
| Apr. 2, 1970 | Pltffs. appl. for Ext. of time to Brief; Cert. of Service |
| Apr. 7, 1970 | JE: Plaintiffs to 4-17-70 to brief, notice to attys |
| Apr. 15, 1970 | Plaintiffs Brief & Cert. of Service |
| May 8, 1970 | Defdts (Garrett & Vaughn) appl. for Ext. of time to Brief; Cert. of Service |
| May 12, 1970 | JE: Defendants to 6-15-70 to brief, notice to attys. |
| June 23, 1970 | Defdts. Brief Leave to file, Irwin, C.J.; Cert. of Service |
| July 6, 1970 | Pltffs. Appl. for Ext of time to Brief; Cert. of Service |
| July 7, 1970 | JE: Pltffs 7-15-70 to Brief; Notice to attys. |
| July 15, 1970 | Plaintiffs Reply Brief; Cert. of Service |
| Nov. 10, 1970 | Original Record (one (1) Bd. Legal Length Vol. of 74 Pp.) |
| Nov. 10, 1970 | Transcript (one (1) Bd. Vol. of 22 Pp.) |

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Nov. 12, 1971 ( JE: Order Berry, C.J.—assigned to Court of Appeals, Div. #2; copies to attys Court of Appeals

Nov. 18, 1971 ( Pltffs. Motion for Recall & Retention, etc. ( Copies to Attys & COA #2

Dec. 6, 1971 ( JE: Opinion — Affirmed as Modified — ( Brightmire, P.J. Copies to: Andrews, ( Mosburg & Assoc.—Highley & Highley ( —Richard J. Roberts—Geo. Verity, Jr. ( —F. H. Williams, Jr.—Judge Howell & ( Mandate

Dec. 16, 1971 Defdts. Petition for Rehearing: Cert. of Service

Dec. 20, 1971 ( JE: Order, Berry, C.J.: denying pltffs. mo. ( for recall & retention as untimely filed, ( etc.: copies to attys.

Dec. 22, 1971 ( J.E.: Order, Brightmire, P. J. directing ( pltff to respond Defdts. Brief in Support ( of Pet. for Rehearing by Jan. 10, 1972, ( etc., copies to attys.

Jan. 7, 1972 ( Pltffs: Response to Pet. for Rehearing & ( Brief in Support; Cert. of Service

Feb. 2, 1972 ( J.E.: Order Brightmire, P. J.: Denying ( Defdts. Pet. for Rehearing; Copies to ( attys.

Feb. 7, 1972 Defdts. Petition for Certiorari: Cert. of Service

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Sept. 26, 1972 ( JE: Opinion—Certiorari Granted; Judgment of the Appellate Court Reversed; Judgment of the Trial Court Affirmed—Jackson, J. Copies to Joe S. Rolston, III —Andrews, Mosburg & Asso.—Highley & Highley—George Verity, Jr.,—T. H. Williams, Jr.—West—CCH

Oct. 19, 1972 JE: Berry C.J., Order directing Clerk to issue Mandate.

Oct. 19, 1972 Mandate issued.

Oct. 25, 1972 Appellants Mo. to Stay Mandate, etc.; Cert. of Service

Oct. 27, 1972 Receipt for Mandate

Nov. 1, 1972 ( Motion of 4th Natl. Bk. of Tulsa to Substitute Party Defendant, Leave to file, Berry C.J; Cert. of Service

Nov. 20, 1972 ( JE: Order, Wm. A. Berry, C.J. Appellants Mo. to Stay the Mandate Denied etc.: Motion for Revivor Denied without Prejudice, etc.; Copies to attys.

Dec. 8, 1972 ( Appellants Notice of Appeal to the Supreme Court of the U.S. Cert. of Service

Apr. 6, 1973 ( Certified copy of probable Jurisdiction from the U.S. Supreme Court.

IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

| | | |
|---|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff, vs. WALTER B. PASCHALL, JR., and JOHN N. PASCHALL; The following named individuals, if living, or if deceased their unknown heirs, executors, administrators, devisees, trustees and assigns, immediate and remote, to-wit: MARY A. GALE, MARY MILLS, H. A. GASSAWAY, A. M. WHITESIDE, JANE WARD BOWER, J. M. HEALEY, J. O. WHITESIDE, H. GRADY ROSS, M. A. NYE, J. L. EMERICK, G. E. BEAN, MRS. PEARL BEAN, BESSIE D. KIKER, C. G. GALE and MAMIE K. JACKSON: and THE AMERICAN INVESTMENT COMPANY, a corporation, if in existence, or if dissolved, its unknown successors, trustees and assigns, Defendants. | ) | NO. 29092 |

## PETITION

COME NOW the Plaintiff, Christie-Stewart, Inc., and for its cause of action against the Defendants herein and each of them alleges and states:

1. That this action involves title to the following described real estate located in Seminole County, State of Oklahoma, to-wit:

The Southwest Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 7 East;

that such real estate is owned as follows:

R. W. Garrett — 1/2

R. H. Vaughn — 1/2

2. That the title of R. W. Garrett and R. H. Vaughn is, however, subject to and burdened by an Oil and Gas Lease in favor of the Plaintiff, Christie-Stewart, Inc., which plaintiff company is in possession of such lease, which oil and gas lease appears of record in Seminole County, Oklahoma, and creates in the Plaintiff, as lessee, a 7/8ths working interest oil and gas leasehold estate, all in accord with the terms of said oil and gas lease.

3. That the above-named Defendants are each claiming some right, title, lien, estate, encumbrance, claim, assessment or interest in and to the above-described real estate contrary to the title of the Plaintiffs as hereinbefore set out, which claims constitute a cloud upon the title of the Plaintiffs. That said Defendants have no right, title, lien, estate, encumbrance, claim, assessment or interest either at law or in equity in and to said real property. That the exact claims asserted by said Defendants are unknown to this Plaintiff but that Plaintiff is entitled to have said Defendants and each of them come forward and assert the exact nature of their claim and Plaintiff is further entitled to have said claims adjudicated inferior to the right, title and interest of the Plaintiff and the cloud thereof removed, and is further entitled to have said Defendants and each of them restrained, enjoined and estopped from further asserting any claim of any right, title, lien, estate, encumbrance, claim, assessment or interest in and to said property adverse to the title of said Plaintiff.

WHEREFORE, Plaintiff prays that it have judgment against the Defendants and each of them as follows:

1. Requiring the Defendants and each of them to come forward and state the exact nature of any right, title, lien, estate, encumbrance, claim, assessment or interest which they hold or assert in and to the above described real estate; adjudicating the cloud created by any such claims to be subject and inferior to the title of the Plaintiff; removing such cloud from Plaintiff's title as above described; and enjoining and estopping the Defendants and each of them from asserting or making any claim of any nature contrary to the title of the Plaintiff.
2. Granting to the Plaintiff any and all other and further relief to which it may be justly entitled.

BROWN, VERITY & BROWN

By /s/ Geo. L. Verity
Geo. L. Verity

Attorneys for Plaintiff
2220 First Natl. Building
Oklahoma City, Oklahoma

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

AMENDMENT TO PETITION

COMES NOW the Plaintiff, Christie-Stewart, Inc., a corporation, and for amendment to its Petition makes the following additional allegation in addition to all of those set out in its original Petition on file herein, to-wit:

(a) Plaintiff deraigns its title as follows: The United States Government set all of the land aside to the Seminole Tribe of Indians who issued a surplus allotment patent to Sendley Mills, a Seminole freedman. The tract descended from him to individuals who failed to pay the taxes thereon. Whereupon Seminole County, on the 17th day of May, 1956, issued a County Treasurer's Resale Tax Deed to R. W. Garrett and R. H. Vaughn. Said grantees issued the oil and gas lease marked Exhibit "A", attached hereto and made a part hereof, to Christie-Stewart Drilling Company, which lessee assigned said lease to the Plaintiff.

(b) The Plaintiff is in actual occupancy of the land described in its Petition by being in actual possession of its oil and gas lease and actually occupying a portion of such land in operating said lease and, further, by the occupancy of their lessors, R. W. Garrett and R. H. Vaughn, who have been in actual, open, notorious, peaceable and adverse possession of all of the lands described in Plaintiff's Petition since the date of the County Treasurer's Resale Tax Deed described in the foregoing paragraph. That since the 7th day of June, 1956, the occupancy of said owners has been by and through their tenants, Esther Campbell and Oscar Campbell, who have since said date been living upon said land, farming and grazing the same, all of which is enclosed with a fence.

(c) That G. C. Gale and Mary Gale own no right, title and interest in and to the tract described in said Petition and that the above named owners hold title to themselves to the exclusion of all others except this Plaintiff, the owner of the above referred to oil and gas lease, and the above named tenants.

WHEREFORE, Plaintiff prays judgment as set out in its original Petition to which this amendment forms an addition.

BROWN, VERITY & BROWN

By /s/ G.L.V.
Geo. L. Verity

ATTORNEYS FOR PLAINTIFF

[Certificate of Mailing Omitted in Printing]

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

## ANSWER

Now comes the defendant H. Grady Ross and respectfully states as follows:

1. That this defendant acquired an undivided 1/16 mineral interest in and to the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of Section 29-9N-7E, Seminole County, Oklahoma, by Mineral Grant dated July 8, 1926, from The American Investment Company, a true copy of which Mineral Grant is hereto attached, made a part hereof and for identification marked Exhibit A.

2. That upon the execution and delivery of said Mineral Grant, a division or separation of the mineral rights as to said 1/16 interest and the surface rights in and to said 40 acres occurred; that defendant's title to said mineral interest has been continuous and defendant has been in the undisputed possession and ownership of said mineral interest since the date of said mineral deed; that this defendant has from time to time exercised his right and ownership of

said mineral interest by the execution and delivery of oil and gas leases from time to time covering said interest to various persons or corporations prospecting for oil and gas on said premises.

3. That the execution and delivery of the Resale Tax Deed by the County Treasurer of Seminole County in 1956 conveyed no right, title or interest to said grantees, R. W. Garrett and R. H. Vaughn in and to the 1/16 mineral interest as above described owned by this defendant, and that said R. W. Garrett and R. H. Vaughn own no right, title or interest in and to said mineral interest by reason of said tax deed or otherwise.

WHEREFORE, this defendant, H. Grady Ross, prays upon final hearing that his title to said 1/16 mineral interest in and to said 40 acres of land be quieted.

H. Grady Ross, defendant

[Certificate of Mailing Omitted in Printing]

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

## ANSWER

Now come the defendants Walter B. Paschall, Jr., and John N. Paschall, and for answer to plaintiff's petition filed herein state as follows:

1. That defendants Walter B. Paschall, Jr., and John N. Paschall, deny each, all and singular the allegations set forth in said petition except as hereinafter specifically admitted.

2. That defendants Walter B. Paschall, Jr., and John N. Paschall, are the owners of 7/8 of all mineral rights in

and under the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of Section 29, Township 9 North, Range 7 East, Seminole County, Oklahoma.

Walter B. Paschall, Jr.,
and
John N. Paschall, Defendants

By
H. Grady Ross,
Their Attorney

[Certificate of Mailing Omitted in Printing]

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

AMENDED ANSWER AND CROSS PETITION

Now come Walter B. Paschall, Jr., John N. Paschall and H. Grady Ross, and for further answer to plaintiff's Petition deny each, all and singular the allegations therein set forth except such as are hereinafter specifically admitted.

CROSS PETITION

That the Tax Deed relied on by R. W. Garrett and R. H. Vaughn, a copy of which is attached hereto and made a part hereof, is void and should be set aside and held for naught for the reason that defendants Walter B. Paschall, Jr., John N. Paschall and H. Grady Ross, owned an undivided mineral interest in and to said SW/4 NW/4 of Section 29, Township 9 North, Range 7 East, Seminole County, Oklahoma, and no notice was served on said mineral interest owners before or after the acquisition of said Tax Deed.

WHEREFORE, defendants pray that said Tax Deed be cancelled, set aside and held for naught.

WALTER B. PASCHALL, JR.,
JOHN N. PASCHALL and
H. GRADY ROSS

By /s/ H. Grady Ross
H. Grady Ross, Attorney

Filed March 9, 1965

[Certificate of Mailing Omitted in Printing]

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[Exhibit A]

No. 3543 COUNTY TREASURER'S RESALE DEED
INSTRUMENT (INDIVIDUAL)
BOOK 890 PAGE 577 FILED: June 6, 1956 at 1 P.M.

WHEREAS, WELDON P. BILLINGSLEY, County Treasurer of Seminole County, State of Oklahoma, on the 14 day of May, 1956 sold separately and singly, in the manner provided by law, at tax resale and R. W. Garrett & R. H. Vaughn bid in for themselves the real estate hereinafter described; and

WHEREAS, all proceedings, notices and duties provided, required and imposed by law prerequisite to the vesting of authority in said County Treasurer to execute this resale deed have been followed given complied with and performed, and

WHEREAS, the said WELDON P. BILLINGSLEY, County Treasurer, is now by law vested with the power and authority to execute this resale deed.

NOW, THEREFORE, this indenture, made this 17 day of May, 1956, between the State of Oklahoma, by WELDON

P. BILLINGSLEY, the Treasurer of Seminole County, of the first part, and R. W. Garrett & R. H. Vaughn, of the Second part, witnesseth that the said party of the first part for and in consideration of the premises and the total sum paid, to-wit:

Nine Hundred Twenty Eight & 07/100 DOLLARS ($928.07), hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey to the said party of the second part, his (or her) heirs, executors, administrators and assigns, forever, the following separately described tracts, parcels, or lots of land so sold separately and singly for the amount bid in the total sum set opposite each, all of said tracts, parcels, or lots of land being located in SEMINOLE COUNTY, OKLAHOMA, TO-WIT:

| DESCRIPTION | CITY, TOWN OR TOWNSHIP | SUBDIVISION SEC OR LOT | TWP. OR BLK | RNG | AMOUNT (BID ON EACH) |
|---|---|---|---|---|---|
| Brothers | Lima | 10 | 3 | | $ .25 |
| " | " | 11 | 3 | | .25 |
| " | " | 12 | 3 | | .25 |
| 2/9 Int. S/2 SE | Redmound | 15 | 10 | 8 | 27.62 |
| ½ int Lot 2 or NW NE | Lincoln | 5 | 9 | 7 | 63.00 |
| SW NW | Lincoln | 29 | 9 | 7 | 700.00 |
| Beg. 130′ N SE cor NW NE th 210′ W x N 120′ x E 210′ x S 120′ to beg. | Wolf | 10 | 8 | 6 | 43.04 |
| 1/12 int NE SE & SW SE | Wolf | 26 | 8 | 6 | 49.00 |
| Carr City | Wolf | 13 to 18 Inc. | 5 | | 11.00 |
| " | " | 8 to 11 Inc. | 5 | | 1.54 |
| " | " | 1 to 12 Inc. | 8 | | 23.00 |
| 1/24 int in NE NW | Econ | 11 | 9 | 6 | 4.11 |
| 1/24 int in NE NW | " | 11 | 9 | 6 | 5.01 |
| TOTAL | | | | | $928.07 |

TO HAVE AND TO HOLD said tracts and parcels of land with the appurtenances thereto belonging to said party of the second part, his (or her) heirs, executors, administrators and assigns, forever, in as full and ample manner as the said Treasurer of said County is empowered by law to sell the same.

IN TESTIMONY WHEREOF, THE WELDON P. BILLINGLEY Treasurer of said County of SEMINOLE, State of Oklahoma, has hereunto set his hand and seal the day and year aforesaid.

$1.10 Revenue Stamps Cancelled.

ATTEST: STATE OF OKLAHOMA
(SEAL) BY: WELDON P. BILLINGSLEY
R. B. GUNN COUNTY TREASURER

R. B. GUNN, County Clerk (Typed)

---

ACKNOWLEDGMENT

STATE OF OKLAHOMA )
) SS.
SEMINOLE COUNTY )

Before me, the undersigned, a Notary Public, within and for the above named County and State, on this 17 day of May, 1956, personally appeared WELDON P. BILLINGSLEY to me known to be the County Treasurer of Seminole County, Oklahoma, and the identical person who executed the within and foregoing instrument and conveyance of land, and acknowledged to me that he executed the same in his capacity as County Treasurer of Seminole County, Oklahoma, as his free and voluntary act and deed as such and as the free and voluntary act and deed of Seminole County, and the State of Oklahoma, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year above written.

[Notary Hand and Seal Omitted in Printing]

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

ENTRY OF APPEARANCE
AND ANSWER TO CROSS PETITION

Comes now R. W. Garrett and R. H. Vaughn and hereby acknowledges receipt of a copy of Cross Petition, filed in this case by Walter B. Paschall, Jr., John N. Paschall and H. Grady Ross, and waives the issuance and services upon them of summons herein.

Said defendants herewith enter a general appearance in this case and for answer to the Cross Petition filed herein, allege and state:

That R. W. Garrett and R. H. Vaughn deny each and every allegation contained in the said Cross Petition, except such as may be hereinafter admitted.

Defendants admit that they claim an interest in the property described in said Cross Petition and state that they are the owners in fee simple of said property, subject however, to an oil and gas lease entered into on the 6th day of November, 1963, by and between R. W. Garrett and his wife, Aline Garrett and R. H. Vaughn and his wife, Georgia Vaughn, of the first part; and Christie-Stewart Drilling Company, of the second part.

The interest claimed herein is by virtue of a Resale Tax Deed recorded in Book 890 at Page 577 in the office of the county clerk of Seminole County, Oklahoma.

Defendants further state that they are in possession of said premises, and have been in the open, notorious, continuous, lawful possession of said premises for more than five (5) years next preceding the filing of said Cross Petition.

WHEREFORE, R. W. Garrett and R. H. Vaughn pray that the Cross Petition be dismissed and nothing be taken therefrom and further pray for their costs herein expended.

R. W. Garrett and
R. H. Vaughn

/s/ By R. H. Vaughn
R. H. Vaughn, Attorney

Filed April 4, 1965

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IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

AMENDED ANSWER

Come now the defendants H. Grady Gross, Walter B. Paschall, Jr., and John N. Paschall, and for answer to the petition of the plaintiff as amended and for reply to the answer of defendants R. W. Garrett and R. H. Vaughn, deny generally and specifically each and every material allegation therein contained except only such matters as are hereinafter specifically admitted.

Further answering, these defendants admit that they claim a 15/16 mineral interest in said lands and premises described as the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of Section 29, Township 9 North, Range 7 East, in Seminole County, Oklahoma, by virtue of a mineral grant dated July 8, 1926, from The American Investment Company, a corporation, and recorded in Book 268 at page 235 in the Office of the County Clerk of Seminole County, Oklahoma, and a deed from The American Investment Company to Walter B. Paschall, the father of defend-

ant Walter B. Paschall, Jr., and John N. Paschall, dated October 10, 1930, and recorded December 12, 1932, in Book ___, Page ___ in the Office of the County Clerk of Seminole County, Oklahoma; that Walter B. Paschall is now deceased and said Walter B. Paschall, Jr., and John N. Paschall are his sole and only heirs; that they have had constructive possession of such mineral interest from the date of said deeds and are now the owners of said 15/16 mineral interest.

Further answering, these defendants state that the alleged Resale Tax Deed under which R. W. Garrett and R. H. Vaughn purport to claim is void and of no force or effect for the following reasons:

1. That no proper notice of sale was given as required by law.

2. That said property was not sold for two-thirds of the assessed value for the current fiscal year when sold nor the full amount of taxes, interest, penalties and costs due on said property.

3. That no proper return of said purported sale was made as required by law.

4. That the County Treasurer was without authority to execute and deliver the alleged Resale Tax Deed sued on and upon which R. W. Garrett and R. H. Vaughn rely and same is void and of no effect.

5. These defendants further allege and state that the mineral interest owned by these defendants was deeded and separated as an estate separate from the land taxes and not subject to taxation, and the original purported sale upon which the alleged resale was based was void and without effect as to the interests of these defendants, in that the same was sold without the knowledge of these defendants and for taxes for which their separate estates were not liable; that these defendants had no knowledge

of the original sale and the interest owned by these defendants was not divested by the original sale, otherwise these defendants would be deprived of their Constitutional rights without due process of law.

WHEREFORE, these defendants pray that plaintiff and defendants R. W. Garrett and R. H. Vaughn take nothing as against these defendants and that their title be quieted as against the said R. W. Garrett and R. H. Vaughn and all persons claiming under them, and for costs and all proper relief.

WALTER B. PASCHALL, JR.,
JOHN N. PASCHALL and
H. GRADY ROSS

/s/ By H. Grady Ross
H. Grady Ross, Attorney

Filed June 14, 1965

IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

| | |
|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff, vs. | ) |
| WALTER B. PASCHALL, JR., and JOHN N. PASCHALL; The following named individuals, if living, or if deceased their unknown heirs, executors, administrators, devisees, trustees and assigns, immediate and remote, to-wit: MARY A. GALE, MARY MILLS, H. A. GASSAWAY, A. M. WHITESIDE, JANE WARD BOWER, J. M. HEALEY, J. O. WHITESIDE, H. GRADY ROSS, M. A. NYE, J. L. EMERICK, G. E. BEAN, MRS. PEARL BEAN, BESSIE D. KIKER, C. G. GALE and MAMIE K. JACKSON: and | ) No. 29092 ) J 49-385 |
| THE AMERICAN INVESTMENT COMPANY, a corporation, if in existence, or if dissolved, its unknown successors, trustees and assigns, Defendants. | ) |

JOURNAL ENTRY OF JUDGMENT

NOW on this 14 day of June, 1965, this cause came on to be heard, the Plaintiff, Christie-Stewart, Inc., appearing by and through its attorney, Geo. L. Verity of Brown,

Verity & Brown, the Defendants, Walter B. Paschall, Jr., John N. Paschall and H. Grady Ross, appearing by and through their attorney, H. Grady Ross, and the Cross-Defendants, R. W. Garrett and R. H. Vaughn, appearing by and through their attorney, R. H. Vaughn, and the Defendants, Mary A. Gale, Mary Mills, H. A. Gassaway, A. M. Whiteside, Jane Ward Bower, J. M. Healey, J. O. Whiteside, M A. Nye, J. L. Emerick, G. E. Bean, Mrs. Pearl Bean, Bessie D. Kiker, C. G. Gale, Mamie K. Jackson and The American Investment Company, a corporation, if in existence or, if dissolved, its unknown successors, trustees and assigns, came not but being wholly in default.

WHEREUPON, the Court examined the pleadings and records in said cause, heard the evidence of the parties and made the following findings of fact:

1. That service by publication was had on the following named Defendants, to-wit:

> Mary A. Gale, Mary Mills, H. A. Gassaway, A. M. Whiteside, Jane Ward Bower, J. M. Healey, J. O. Whiteside, M A. Nye, J. L. Emerick, G. E. Bean, Mrs. Pearl Bean, Bessie D. Kiker, C. G. Gale, Mamie K. Jackson and The American Investment Company;

that such publication service was authorized by the Statutes of the State of Oklahoma and that such service was, in all respects, sufficient, proper and regular, is approved by the Court, and the Court further finds that said Defendants are under the jurisdiction of the Court and are in default.

2. That this action involves title to the following described tract of land in Seminole County, Oklahoma, to-wit:

> The Southwest Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 7 East.

3. That the Plaintiff's Petition is hereby found to be true as against all of the above-named Defendants in default and that the Cross-Defendants, R. W. Garrett and R. H. Vaughn, own title in and to the above described tract of land free and clear of any claim of right, title and interest asserted by any of the above-named defaulting Defendants, subject, however, to the oil and gas lease given by said Cross-Defendants to the Plaintiff, Christie-Stewart, Inc., and that said Plaintiff owns such oil and gas lease and the oil and gas leasehold estate created thereby free of any claim of right, title and interest asserted by any of said defaulting Defendants; that the Defendants, Walter B. Paschall, Jr., and John N. Paschall, together assert title in and to an undivided 7/8ths mineral interest underlying the above-described lands and the Defendant, H. Grady Ross, asserts title in and to an undivided 1/16th mineral interest in and to the above-described lands contrary to the title asserted by the Cross-Defendants, R. W. Garrett and R. H. Vaughn, and the Court retains jurisdiction of this cause in order to determine title in and to the 15/16ths mineral interest that is in controversy by virtue of the conflicting claims of the said parties.

4. That the Plaintiff is entitled to judgment against the defaulting Defendants, and each of them, fully quieting its title in and to the oil and gas leasehold estate created by virtue of the oil and gas lease given by R. W. Garrett and R. H. Vaughn to the Plaintiff herein, Christie-Stewart, Inc.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That service by publication was had upon the above-named defaulting Defendants, and each of them, and that such publication service was authorized by the Statutes of the State of Oklahoma and was, in all respects, sufficient, proper and regular and is hereby approved by the Court; that such service gave this Court jurisdiction of the parties, that it has jurisdiction of the subject matter here in

controversy and adjudges said Defendants, and each of them, to be in default.

2. That the Plaintiff's title in and to the oil and gas lease from R. W. Garrett and R. H. Vaughn to the Plaintiff and described in Plaintiff's Petition covering the following described land in Seminole County, Oklahoma, to-wit:

> The Southwest Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 7 East,

and recorded in Book 1045, Page 218, is in all things perfect and that the above-named defaulting Defendants have no right, title, interest, lien, encumbrance or estate in and to the above-described lands contrary to the title of Plaintiff in and to said lease and the oil and gas leasehold estate thereby created and any and all cloud that might be on the title to said oil and gas lease and leasehold estate by virtue of any claim of right, title, interest, lien, encumbrance or estate made by any of said Defendants is hereby removed and held inferior and subject to the title of Plaintiff therein and said title is fully quieted in the Plaintiff.

3. That the above-named defaulting Defendants, and each of them, be and they are hereby forever enjoined and estopped from claiming or asserting any right, title, lien, estate, encumbrance, assessment, or interest in and to the above-described land contrary to the title of the Plaintiff as above described.

/s/ Bob Howell
DISTRICT JUDGE

APPROVED:

BROWN, VERITY & BROWN

/s/ By Geo. L. Verity
Geo. L. Verity

ATTORNEYS FOR PLAINTIFF

Filed June 14, 1965

---

IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

[Title Omitted in Printing]

AMENDMENT TO ANSWER

COME NOW Zelda Danna Paschall, as Executrix of the Estate of Walter B. Paschall, Jr., deceased, and as sole devisee under the Will of such decedent, and Mary Louise Green Paschall, as Executrix of the Estate of John N. Paschall, deceased, and Mary Louise Green Paschall, Jan Paschal Harden, and John N. Paschall, Jr., as sole devisees under the Will of John N. Paschall, deceased, and H. Grady Ross, and for further Answer to plaintiff's petition filed herein and supplemental to the original Answers by such decedents and H. Grady Ross, allege and state as follows:

1. These answering defendants, other than H. Grady Ross, have succeeded to the interests of Walter B. Paschall, Jr. and John N. Paschall both of whom are now deceased and whose estates are now pending in the District Court of Oklahoma County, Oklahoma. Accordingly such answering defendants other than H. Grady Ross request that they be substituted as parties defendants in the place of the original defendants, Walter B. Paschall, Jr. and John N. Paschall, respectively.

2. None of these answering defendants or their predecessors in interest were notified of the tax sale proceedings under which R. W. Garrett and R. H. Vaughn now claim the rights vested in these answering defendants, either actually or constructively, and such failure of notification was in direct contravention of the applicable statutory requirements for valid tax sales of real estate in the State of Oklahoma. Furthermore, any purported constructive notice that may have been attempted for the purposes of notifying these answering defendants of such alleged tax sale was

insufficient to give actual or constructive notice to them under the applicable statutes and under the requirements of the Oklahoma and United States Constitutions for due process of law. Neither these answering defendants, or any of them, or any of their respective predecessors in interest were on actual notice or had any knowledge of the purported tax sale proceedings before or while such proceedings were being conducted or thereafter until notification at the time an oil and gas lease was purchased from them by plaintiff.

3. Plaintiff, Christie-Stewart, Inc., holds a valid oil and gas lease covering the interest of these answering defendants as well as the purported oil and gas lease executed in its favor by R. W. Garrett and R. H. Vaughn and their respective wives, under date of November 6, 1963, attached to the Amendment to Petition filed herein by Christie-Stewart, Inc.

WHEREFORE these answering defendants pray for judgment of the court that:

(a) The purported tax sale proceedings which resulted in the County Treasurers Resale Tax Deed of May 17, 1956, issued to R. W. Garrett and R. H. Vaughn was ineffective to terminate the interest in the oil, gas, and other minerals owned by these answering defendants or to transfer such rights to R. W. Garrett and R. H. Vaughn; and

(b) Quieting the title of these answering defendants to such oil, gas and mineral rights as against all claims by the parties to this action except the rights of Christie-

Stewart, Inc. under its oil and gas lease covering the interests of these answering defendants.

ANDREWS, MOSBURG, DAVIS, ELAM, LEGG & KORNFELD

/s/ By William J. Legg

Attorneys for defendants
Mary Louise Green Paschall individually and as Executrix of the Estate of John N. Paschall, deceased, and Jan Paschal Harden, John N. Paschall, Jr. and H. Grady Ross

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HIGHLEY AND HIGHLEY

/s/ By Jack Highley
Jack Highley

Attorneys for defendant
Zelda Danna Paschall, individually and as Executrix of the Estate of Walter B. Paschall, Jr., deceased

Hightower Building
Oklahoma City, Oklahoma

[Certificate of Mailing Omitted in Printing]

IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA

| | | |
|---|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff | ) | |
| vs. | ) | No. 29,092 |
| WALTER B. PASCHALL, JR., et al, Defendants | ) | |
| R. W. GARRETT AND R. H. VAUGHN, Cross-Defendants | ) | |

JOURNAL ENTRY OF JUDGMENT

(The full text of this document is shown as Appendix B in the Jurisdictional Statement filed herein, at Page xv thereof.)

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THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

| | | |
|---|---|---|
| MARY LOUISE GREEN PASCHALL, et al, Plaintiffs in Error, | ) | |
| vs. | ) | No. 43,907 |
| R. H. VAUGHN AND R. W. GARRETT, Defendants in Error. | ) | |

APPEAL FROM THE DISTRICT COURT OF
SEMINOLE COUNTY, OKLAHOMA

(The full text of this document is shown as part of Appendix A in the Jurisdictional Statement filed herein, at Page vii thereof.)

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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

| | | |
|---|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff, | ) | |
| vs. | ) | No. 43,907 |
| WALTER B. PASCHALL, JR., et al, Defendants, | ) | |
| R. W. GARRETT AND R. H. VAUGHN, Cross-Defendants. | ) | |

CERTIORARI TO THE COURT OF APPEALS,
DIVISION NO. 2

(The full text of this document is shown as part of Appendix A in the Jurisdictional Statement filed herein, at Page i thereof.)

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

| | | |
|---|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff, | ) | |
| vs. | ) | No. 43,907 |
| WALTER B. PASCHALL, JR., et al, Defendants, | ) | |
| R. W. GARRETT AND R. H. VAUGHN, Cross-Defendants. | ) | |

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

(The full text of this document is shown at Appendix C in the Jurisdictional Statement filed herein, at Page xx thereof.)

# Supreme Court of the United States

*No.* 72-922

Mary Louise Green Paschall,
et al.,

Appellants,

v.

Christie-Stewart, Inc., et al.

APPEAL from the Supreme Court of the State of Oklahoma.

The statement of jurisdiction in this case having been submitted, and considered by the Court, probable jurisdiction is noted.

72-922

DEC 26 1972

MICHAEL RODAK, JR., CLERK

In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. ——————

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

## JURISDICTIONAL STATEMENT

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December, 1972

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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In the
Supreme Court of the United States
OCTOBER TERM, 1972

No. ———

MARY LOUISE GREEN PASCHALL, JAN PASCHAL HARDEN, JOHN N. PASCHALL, JR., H. GRADY ROSS and ZELDA DANNA PASCHALL,

*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., a corporation, R. W. GARRETT and R. H. VAUGHN,

*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

## JURISDICTIONAL STATEMENT

Appellants, Mary Louise Green Paschall, Jan Paschal Harden, John N. Paschall, Jr., H. Grady Ross and Zelda Danna Paschall, submit their statement disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the Supreme Court of Oklahoma in Case No. 43,907, reversing a judgment of the Court of Appeals, Division No. 2, of the State of Oklahoma, and affirming the judgment of the Trial Court.

## THE OPINIONS BELOW

The Opinion of the Oklahoma Supreme Court has not yet been reported. The Opinion of the Oklahoma Court of Appeals, Division No. 2, was not reported. Copies of both Opinions are attached hereto as Appendix A. In addition, the Trial Court journal entry of judgment is appended as Appendix B.

## JURISDICTION

1. This is an appeal from a decision of the Supreme Court of Oklahoma reversing a judgment of the Court of Appeals, Division No. 2, of the State of Oklahoma and affirming the judgment of the Trial Court that a Resale Tax Deed executed in 1956 by Seminole County, Oklahoma officials was valid and conveyed to Appellees Garrett and Vaughn, the full fee simple title to forty acres of land, including the mineral rights owned of record by the predecessors in interest of Appellants. The tax sale was conducted under the procedures established in 68 Okla. Stat. 1951, § 381, et seq. then in effect, and Appellants here challenge, and have challenged throughout the proceedings of this case, the adequacy of the notice of such tax sale as required by such statute to be given to Appellants or their predecessors in interest as owners of previously severed mineral rights, consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Oklahoma handed down its Opinion on September 26, 1972. The Notice of Appeal to this Court was filed by Appellants with the Clerk of the Supreme Court of Oklahoma on December 8, 1972.

3. The jurisdiction of this Court upon appeal is conferred by 28 U.S.C.A., § 1257(2). With respect to Appellant's challenge of the validity of the above mentioned state statute in relation to the notice requirements thereof, on the ground that as applied to the taking of their mineral rights under the Resale Tax Deed such state statute is repugnant to the Constitution of the United States, the decision of the highest court of the state was in favor of its validity.

4. Cases believed to sustain the jurisdiction of this Court on appeal include *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 Sup.Ct. 652, 94 L.Ed. 865 (1950); *Covey* v. *Town of Somers*, 351 U.S. 141, 76 Sup.Ct. 724, 100 L.Ed. 1021 (1956); *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 Sup.Ct. 200, 1 L.Ed.2d 178; and *Wisconsin E.P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 Sup. Ct. 324, 1 L.Ed.2d 241 (1956).

5. Because of the interrelationship between the "Original Sale" and the "Resale" under Oklahoma statutory law and decisions, we quote below the notice provisions of the tax sale statutes for both stages of the procedure, although the judgment appealed from applies only to a Resale Deed:

68 Okla. Stat. 1951 §382
(Original Sale)

"The treasurer shall give notice of the sale of real property for delinquent taxes by publication thereof once a week for three consecutive weeks, commencing after the first day of October, preceding the sale, in some newspaper in the county, to be designated by the board of county commissioners, and if the board of county commissioners shall fail to designate such

paper, then in a paper to be selected by the treasurer. Such notice shall contain a notification that all lands on which the taxes of such fiscal year remain due and unpaid will be sold, and of the time and place of the sale, and shall contain a list of the lands to be sold and the amount of taxes due. The county treasurer shall charge and collect in addition to the taxes, interest and penalty the sum of twenty-five cents on each tract of real property other than town lots, and ten cents on each town lot advertised for sale, which sum shall be paid into the county treasury, and the county shall pay the cost of the publication of such notice. But in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising. R.L. 1910, §7397."

68 Okla. Stat. 1951 §432b
(Resale)

"The County Treasurer shall give notice of the resale of such real estate by publication thereof once a week for four consecutive weeks preceding such sale, in some newspaper, having been continuously published one hundred four (104) consecutive weeks with admission to the United States Mails as second class mail matter, with paid circulation and published in the county where delivered in the mails in the county to be designated by the Treasurer; and if there be no paper published in the county, or publication is refused, he shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall contain a description of the real estate to be sold, the name of the owner of said real estate as shown by the last tax rolls in the office of the County Treasurer, the time and place of sale, a statement of the date on which said real estate was sold to the county for delinquent taxes, the year or years for which taxes have been assessed but remain unpaid, and that the same has not

been redeemed for the period of two years from the date of sale, the total amount of all delinquent taxes, costs, penalties and interest accrued, due, and unpaid on the same, and that such real estate will be sold to the highest bidder for cash. It shall not be necessary to set forth the amount of taxes, penalties, interest and costs accrued each year separately, but it shall be sufficient to publish the total amount of all due and unpaid taxes, penalties, interest and costs. Laws 1939, p. 546, §3; Laws 1941, p. 338, §1."

## STATEMENT OF QUESTIONS

1. Whether the notice requirements of the tax sale tutes of the State of Oklahoma in effect at the time of purported taking of the mineral rights of Appellants e under consideration (68 Okla. Stat. 1951, §381 et seq.) re repugnant to the Due Process Clause of the Fourth Amendment to the Constitution of the United States, decision of the Supreme Court of Oklahoma being in or of validity of such state statutes.

2. Whether adequate notice of an Original Tax Sale a Tax Resale was given Appellants or their predecesas owners of previously severed mineral rights under ls in the State of Oklahoma, consistent with the Due cess Clause of the Fourteenth Amendment to the Conition of the United States, the decision of the Supreme rt of Oklahoma being that notice given was adequate.

## STATEMENT OF THE CASE

At the times here involved, John N. Paschall and Walter B. Paschall, Jr., were the record owners in equal shares of an undivided 15/16 mineral rights and H. Grady Ross owned the other undivided 1/16 mineral rights under the SW/4 NW/4 of Section 28-9N-7E, Seminole County, Oklahoma. The surface was separately owned and the above named mineral owners had no interest in the surface. Appellants are successors in interest to the above named mineral owners.

The surface owner failed to pay the ad valorem taxes for the year 1952, and the County Treasurer included the land in the Original Sale on the first Monday of November, 153. Publication notice thereof was given in accordance with the applicable statute (68 Okla. Stat. §382), none of the owners of interests in the land being named therein. No personal notice to the above named mineral owners was served upon them nor was there posting of notice on the land or elsewhere or mailing of notice to such mineral owners. The statutes did not require any such notice other than publication in the manner actually conducted. Seminole County became the purchaser at such Original Sale.

The land remained unredeemed and after two years was included in the Resale conducted on the second Monday in May, 1956. Notice of the Resale was given by publication in accordance with the applicable statute (68 Okla. Stat. §432b), only the surface owner being named therein. No personal notice to the above named mineral owners was served upon them nor was there posting of notice on the land or elsewhere or mailing of notice to such mineral own-

ers. The statutes did not require any such notice other than publication in the manner actually conducted. At such Resale, Otis Garrett was the successful bidder and the Resale Deed was made out to R. W. Garrett and R. H. Vaughn, who now claim the entire interest in the land including all the mineral rights.

A certified transcript of all the above mentioned tax sale proceedings on file in the office of the County Treasurer has been admitted in evidence in this case. The parties have stipulated that the above named mineral owners received no actual notice of either the Original Sale or the Resale. Walter B. Paschall, Jr., died testate in the year 1965, and John N. Paschall died testate in the year 1966, and their respective devisees have been substituted as parties.

In the year 1963, the plaintiff in this action, Christie-Stewart, Inc., purchased an oil and gas lease from Mr. Garrett and Mr. Vaughn. Later, a separate lease was purchased by the same lessee from Walter B. Paschall, Jr., and John N. Paschall, and another from H. Grady Ross. Mr. Vaughn testified that no other lease had been previously executed by the tax sale purchasers, that they had conducted no previous exploration for oil, gas, or other minerals on the land, and that no production had been established in the interim between the tax sales of 1953-1956 and the leasing to Christie-Stewart, Inc. In order to determine that they had valid leasehold coverage prior to drilling a well on the land, Christie-Stewart, Inc., filed this action and an order of the Trial Court was thereafter entered quieting the oil and gas leasehold title in that corporation but reserving for future consideration the question of which set of claimants had title to the mineral rights

and, consequently, which oil and gas lease was valid and which was void.

A well was drilled by Christie-Stewart, Inc., in 1965, and production was established which has continued to the present time. Royalties have been suspended by the purchaser of the production pending determination of the owners of the mineral rights, *i.e.*, as between Mr. Garrett and Mr. Vaughn on the one hand and the Paschall devisees and Mr. Ross on the other. It is this question that the District Court of Seminole County, Oklahoma, was asked to decide and this turns on the validity of the taking of the mineral rights under the Original Sale of 1953 and the Resale of 1956. The Trial Court entered its Judgment on November 3, 1969, that the Resale Tax Deed of 1956 was valid and conveyed the full fee simple title including the mineral rights here in dispute (Appendix B).

It is the position of the Paschall devisees and H. Grady Ross, and has been since the inception of this litigation, that the tax sale proceedings in both the Original Sale of 1953 and the Resale of 1956 failed to include the essential element of constitutional notice to the then owners of the mineral rights, a separate and severed property interest. Such property owners were thereby denied due process of law, and therefore the purported taking of their property was void *ab initio*.

The federal questions stated above were raised in the Trial Court by Amendment to Answer filed by Appellants, and argued and briefed in the Trial Court (Transcript of Trial Court Proceedings, pages 18 and 19) and adversely ruled upon by the Trial Court. These federal questions were thereafter the basis of the appeal Brief of Plaintiffs in

Error and decided in favor of Appellants by the Oklahoma Court of Appeals, Division No. 2, the opinion (Appendix A) dealing specifically with such questions. Thereafter, the Supreme Court of Oklahoma again reviewed the case and reversed the judgment of the Oklahoma Court of Appeals on the specific federal questions stated above, affirming the judgment of the Trial Court (Appendix A).

## THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Appellants were the owners of the entire severed mineral interest in the land with no ownership in the surface. Under Oklahoma law, severed mineral interests are separate property rights, but the owners thereof have no duty to pay ad valorem taxes, that duty falling exclusively upon the owner of the surface. At the Original Sale, only publication notice was given and no names of owners were included in the notice. At the Resale, only publication notice was given and only the name of the surface owner was recited in the notice. The statutory requirements of notice of the Resale, 68 O.S. 1951 §432b, required inclusion of the "name of the owner of said real estate." Thus, as to the mineral owners, the statutory procedure itself was not effectively followed. Their separate property interests were not accorded due process of law, even under the Resale statute. Furthermore, this manner of notification (publication without naming the affected owners) does not adequately fulfill the notice requirements of the United States Constitution because it amounts to no more than a "mere gesture" at notification. It is not a means of notification "such as one desirous of actually informing the absentee

might reasonably adopt to accomplish it"; *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 Sup.Ct. 652, 94 L.Ed. 865 (1950). At no time did the fact of the tax sale ever actually come to the attention of the mineral owners until an offer to purchase an oil and gas lease was made to them and this action was filed against them. Since neither adequate constructive notice was given nor actual notice received, due process of law was not carried out as to the rights of the mineral owners. The tax sale procedure constituted an attempted taking of the mineral owners' property without due process of law.

The Oklahoma statutory tax sale procedure is administrative in nature. It provides in detail the steps to be followed by the county officials who conduct the tax sales. In some steps, the statute sets forth the forms to be used. The notice requirements for each occasion of sale are specified in the statute. It requires no court proceedings to perfect title acquired through the tax sale.

A preliminary review of tax sale requirements of other states shows that numerous states have statutory procedure similar to that of Oklahoma. A wide geographical distribution of those states is indicated, *e.g.* Arizona, Florida, Massachusetts, Idaho, Indiana, Colorado and North Dakota and many others. Another group of states have statutes providing for direct notice to the owners whose property is being taken. Such notice takes various forms: formally served process, mailing by regular mail or in some states by certified mail, or publication notice addressed specifically to the individual owners concerned. Another group of states have statutes which require a fully judicial foreclosure of the tax lien after bringing the owner of the land

into court through normal judicial process. The Oklahoma procedure is an example of the least strict requirements of notice to the owner of the land, especially with regard to Resales by the county after the Original Sale has vested it with the tax title. The Oklahoma Supreme Court has decided that no notice to the severed mineral interest owner is necessary at the Resale (Appendix A). When it is realized that the county acquired its tax title through the Original Sale which requires no naming of the owner in the publicatio notice of sale and also requires no direct notice to the owner, it becomes shockingly obvious that a taking has occurred without due process. Tax sale procedure in other states is similar.

The substantial character of the federal questions raised herein is also illustrated by the numbers and class of owners affected throughout the United States by this type of tax lien enforcement. Page upon page of newspaper listings of property to be sold for taxes occur in many states throughout every year. In the major percentage of instances the taking is from individual persons who are predominately of the lower income group. Thus the impact and detrimental effect of the statutory procedure falls most heavily upon those least likely to be able to defend their property rights, least likely to be actually apprised by the methods of notification used, and least likely to understand the meaning of the notice if by chance it does come to their attention.

## CONCLUSION

Appellants respectfully suggest that this appeal brings before this Court federal questions under the Constitution which are far-reaching and important, both in terms of legal principles and of practical impact upon individual owners of real estate throughout the United States, and that the questions are so substantial as to require plenary consideration with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

ANDREWS, MOSBURG, DAVIS, ELAM,
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*Counsel for Appellants*

December, 1972

## APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED
SUPREME COURT
OF OKLAHOMA
SEP 26 1972
ANDY PAYNE
CLERK

Christie-Stewart, Inc., a Corporation,
Plaintiff,
vs.
Walter B. Paschall, Jr., and John N. Paschall, et al.,
Defendants,
R. W. Garrett and R. H. Vaughn,
Cross-Defendants.

No. 43,907

FOR OFFICIAL PUBLICATION

CERTIORARI TO THE COURT OF APPEALS,
DIVISION NO. 2

Action by Christie-Stewart, Inc., plaintiff (oil and gas lessee) to quiet title and to determine whether the defendants, the Paschalls and Ross, or the defendants, Garrett and Vaughn, were the owners of the minerals and entitled to the royalties produced under their lease. The trial court, Honorable Bob Howell, Judge, held that defendants, Garrett and Vaughn, acquired title to the minerals under a valid Resale Tax Deed. The Court of Appeals, Division 2, held in favor of the Paschalls and Ross after first finding that the Resale Tax Deed was void for lack of adequate notice and due process. Garrett and Vaughn seek certiorari.

CERTIORARI GRANTED; JUDGMENT OF THE APPELLATE COURT REVERSED; JUDGMENT OF THE TRIAL COURT AFFIRMED.

[APPENDIX]

William J. Legg,
Andrews, Mosburg, Davis, Elam,
Legg and Kornfield, Oklahoma City,

Jack Highley,
Highley, Highley and Short,
Oklahoma City, For Defendants, the Paschalls and Ross

Richard S. Roberts,
T. H. Williams, Jr., For Defendants, Garrett and Vaughn.

JACKSON, J.

The question for decision is whether the Oklahoma statutory procedure for the sale of real property for delinquent ad valorem taxes complies with constitutionally adequate notice and due process of law. A brief statement of the facts will explain how the issue arose.

Prior to 1952 the Paschalls and H. Grady Ross acquired by mineral deeds 15/16ths of the minerals in and under a 40 acre tract of land in Seminole County, Oklahoma. The surface owner failed to pay the ad valorem taxes for the year 1952, and pursuant to statute the County Treasurer included the land in the Original Sale on the 1st Monday in November, 1953. Publication notice of the Original Sale was given prior to the sale in the manner provided by the statute. There being no bidders at the Original Sale, Seminole County became the purchaser and acquired a certificate which in legal effect was an ad valorem tax lien.

The 1952 taxes were not paid during the next two years by the surface owner or by the mineral deed holders and, pursuant to statute, the County Treasurer included this land in the Resale conducted on the second Monday in May, 1956. Publication notice of the Resale was given in accordance with the statute prior to the sale and the mineral deed holders, the Paschalls and Ross, did not receive notice of the sale either by personal notice, mailing, or posting. Garrett and Vaughn were the successful bidders

at the Resale and claim a fee simple title. Their bid was in excess of the amount of taxes due and the surface owner received the surplus. He is not a party in this action.

In 1963 Christie-Stewart, Inc. (plaintiff herein) acquired separate oil and gas leases from Garrett and Vaughn and from the Paschalls and Ross. Plaintiff brought this action to quiet title to its leases and to determine whether Garrett and Vaughn acquired title to the mineral rights by their Resale Tax Deed, or whether the mineral rights remained in the Paschalls and Ross. Oil was discovered on the land in 1965 and royalty payments have been suspended pending decision of the ownership of the mineral rights.

The trial court, consistent with our statutes and former decisions of this court, held that the Resale Tax Deed purchasers (Garrett and Vaughn) were the owners of the minerals. The Paschalls and Ross appealed. The Court of Appeals, Division No. 2, relying upon Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865; Walker v. City of Hutchinson, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; Wisconsin Electric Power Co. v. City of Milwaukee, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241; and New York v. New York, New Haven & Hartford R.R. Co., 344 U.S. 293, 73 S. Ct. 299, 97 L.Ed. 333, concluded that publication was not adequate notice and under the circumstances of this case reversed the trial court.

It is readily apparent that in each of the cited cases the court was dealing with law suits or actions where the statute did not specifically designate the time and place where the action or proceeding would be filed and action taken. In *Mullane* the trustee was required to make an accounting *twelve to fifteen months* after the establishment of the trust fund and *triennially thereafter*. In *Walker* the City could file its condemnation proceeding at its convenience. *Wisconsin Electric Power Co.* involved special assessments for street improvements, and *New York* involved a bankruptcy proceeding. To this list may be added Schroeder v. New York, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed. 2d 255,

89 A.L.R. 2d 1398. See also Due Process in Oklahoma Tax Sales, 20 Okla. Law Rev. at p. 374. In each of the cited cases publication was insufficient notice because it would require a property owner to constantly examine the legal notices contained in newspapers to determine whether his property was in jeopardy. In each of the cited cases the landowner was not aware that he should examine the published notices. He could not forecast with certainty when, if ever, an action would be filed.

In the instant case the land owner, and those having interests therein, knew that ad valorem taxes would be assessed, knew when they would be due, and could forecast with certainty the day, the hour, and place where ad valorem tax foreclosures would occur if the taxes were not paid. Since the Original Sale and Resale occurred in 1953 and 1956, respectively, our references will be to the statutes then in effect, i.e., 68 O.S. 1951, §§ 351, et seq.

68 O.S. 1951, §§ 382, 383, required the County Treasurer to give prior notice of an Original Sale by publication that the sale for delinquent taxes would commence on the first Monday in November in each year, between the hours of 9 A.M. and 4 P.M., at the office of the County Treasurer. A return of the Original Sale was required to be filed with the County Clerk (register of deeds) on or before the last day of November in each year. 68 O.S. 1951, § 386.

In the instant case there were no other bidders at the November, 1953, Original Sale and the County Treasurer bid on the property and acquired for the county a tax lien. 68 O.S. 1951, §§ 388 and 391.

This property remained unredeemed after the November, 1953, Original Sale and it became the duty of the County Treasurer to conduct a Resale on this property on the second Monday in May, 1956. 68 O.S. 1951, § 432. Notice of the Resale was published for four consecutive weeks in an authorized newspaper published in the county stating that the property (describing it and listing the name of taxable owner) would be sold at Resale at the office of the

County Treasurer beginning on the second Monday in May, 1956, between the hours of 9 A.M. and 4 P.M. as required by the statutes. 68 O.S. 1951, §§ 432 b and 432 d. It was at this Resale in 1956 that Garrett and Vaughn entered their bid and acquired their Resale Tax Deed (fee simple title) within 30 days after the Resale. 68 O.S. 1951, § 432 f.

Severe penalties were provided for the County Treasurer if he failed to conduct Original Sales and Resales at the time required by statutory law. 68 O.S. 1951, §§ 432 n, 472 and 475.

It was the duty of the surface owner to attend the County Treasurer's office and pay the 1952 taxes when due on November 1, 1953. 68 O.S. 1951, § 351. If the taxes were not paid by the owner the mineral holders had the right to pay the taxes and assert an equitable lien against the surface owner, Cochran v. Godard, 182 Okl. 506, 78 P. 2d 692, since they had an interest in the land. Jenkins v. Frederick, 208 Okl. 583, 257 P. 2d 1058. As owners of an interest in the land they were required to take note of the taxing statutes and procedures affecting the control or disposition of their interest. Anderson National Bank v. Luckett, 321 U.S. 233, 243, 88 L.Ed. 692, 703. Every person who owns an interest in land in Oklahoma is charged with knowledge that the land is subject to an ad valorem tax, that the land may be sold in the manner provided by law, and is charged with notice of the time and place where such property will be sold. Ponder v. Ebey, 194 Okl. 407, 152 P. 2d 268; 68 O.S. 1951, §§ 432 b and 432d, supra. It follows that the Paschalls and Ross had knowledge that the land was taxable, when the taxes were due, when the property would be sold at Original Sale, that they had a right to redeem prior to Resale, and the time and place of the Resale. They had two years to inquire of the Treasurer whether the taxes had been paid by the surface owner prior to the Resale. Ponder v. Ebey, supra.

Since oil and gas interests in land are not separately taxed on an ad valorem basis the names of the mineral

owners do not appear in the County Treasurer's records. We have held that the Treasurer is not required to search the County Clerk records to ascertain the names of the owners of the land. Herndon v. Pigg, 190 Okl. 402, 124 P.2d 425.

This court and our Legislature has been aware of *Mullane* for several years, and curative measures have been taken where necessary. Bomford v. Socony Mobil Oil Co., Okl., 440 P. 2d 713, and 66 O.S. 1971, § 55, are examples.

The distinction we draw between the cases relied upon by the Appellate Court and the statutory procedures for foreclosing tax liens is well illustrated in Walker v. Hoffman, Okl., 405 P. 2d 57. In Walker v. Hoffman we held that an applicant for a county treasurer's *certificate deed* must give notice to the severed mineral interest holders. *Mullane* clearly applies where an application is made for a treasurer's certificate deed. This is because the timing of the application is left to the applicant and the burden of providing adequate notice and due process is imposed upon the applicant. In Resales the County Treasurer gives notice by publication (to owners who already statutorily know the time and place of the sale) that the land will be sold at the time and place specified by the statute unless the taxes are paid. Thus the publication notice of Resale is supplemental to other action which had conveyed a warning to the owners of interests in the land. The Supreme Court in *Mullane* said this has been the traditional and acceptable use of publication. 339 U.S. at p. 316.

We conclude that Oklahoma's Resale tax sale procedures afford adequate notice and due process where, as here, the land was correctly described in the notices and the statutory procedures were specifically followed.

The judgment of the Appellate Court is reversed. The judgment of the trial court is affirmed.

BERRY, C.J., and WILLIAMS, IRWIN, HODGES, LAVENDER, and BARNES, JJ. CONCUR.

THIS OPINION NOT TO BE CONSIDERED AS PRECEDENT OR AUTHORITY AND NOT FOR PUBLICATION IN THE OFFICIAL REPORTER.

THE COURT OF APPEALS, DIVISON 2
STATE OF OKLAHOMA

FILED
COURT OF APPEALS
OF OKLAHOMA
DEC 6 - 1971
ANDY PAYNE
CLERK

Mary Louise Green Paschall, Individually and as Executrix of the Estate of John N. Paschall, deceased, et al.,

Plaintiffs in Error,

vs. No. 43,907

R. H. Vaughn and R. W. Garrett,

Defendants in Error.

APPEAL FROM THE DISTRICT COURT OF SEMINOLE COUNTY, OKLAHOMA

Honorable Bob Howell, Trial Judge

AFFIRMED AS MODIFIED

William J. Legg
Andrews, Mosburg,
Davis, Elam, Legg
& Kornfeld
Oklahoma City, Oklahoma

Jack Highley
Highley, Highley
and Short
Oklahoma City, Oklahoma For Plaintiffs in Error

[APPENDIX]

Richard S. Roberts
Wewoka, Oklahoma
T. H. Williams, Jr.
Wewoka, Oklahoma — For Defendants in Error

BRIGHTMIRE, P. J.

The single question presented by this appeal is whether Seminole County deprived appellants of Fourteenth Amendment due process of law by failing to give them adequate notice of delinquent tax sale proceedings affecting several mineral interests they owned under a certain forty acres of land located in Seminole County, Oklahoma.

For the purpose of this opinion it is sufficient to say that appellants consist of the personal representatives of the deceased individuals who acquired 15/16th of the mineral interests to the land in question by grant in 1926, and H. Grady Ross who became owner of a 1/16th mineral interest in the same tract the same year. Both mineral deeds were duly recorded in the office of the Seminole County Clerk shortly after execution. Appellants will, for convenience, be referred to as mineral owners.

The mineral owners were named defendants in a suit filed by Christie-Stewart, Inc., an oil and gas lessee of subject property, seeking a judicial determination of the rightful royalty owners as a result of oil production from subject tract. Through various motions, impleading of parties, and pleadings, the dispute in the trial court evolved into one between appellant mineral owners and appellees, R. H. Vaughn and R. W. Garrett, who purchased the acreage during a county tax sale. For convenience the latter two appellees will sometimes be referred to as tax sale purchasers and Christie-Stewart, Inc. as lessee.

Historically, the beginning of the controversy can be traced back to 1952 when the owner of the separate surface interest failed to pay county ad valorem taxes. The County Treasurer included the land in a Wewoka (county

seat of Seminole County) newspaper publication notice of an original sale to be held on the first Monday of November 1953 as required by the governing statutes, 68 O.S. 1951 § 381, et seq. Such statutes did not require other notice to be given to the mineral owners by way of personal service, mailing or posting, and, of course, no such notice was given. Seminole County became the purchaser at the original sale. Following a statutory redemption period, another Wewoka newspaper notice was published of a resale to be held on the second Monday in May 1956. It is stipulated no other notice was attempted or given the mineral owners all of whom lived in Oklahoma but in counties other than Seminole. At resale appellees Garrett and Vaughn, as successful bidders, acquired a resale deed from the county and at trial claimed by reason thereof the entire interest in the land, both surface and mineral rights.

In 1963 lessee acquired an oil and gas lease from the tax sale purchasers and later a separate lease from appellants. A producing well was drilled in 1965. Royalty payments have been suspended pending outcome of this lawsuit.

Based upon these virtually undisputed facts the trial court held that the tax sale proceedings were valid and sufficient to convey appellants' mineral rights to the tax sale purchasers and entered judgment accordingly.

Appellants defended below principally on the theory that they, as record owners of the mineral rights, were deprived of constitutionally sufficient notice of the tax delinquency proceedings and as to them such proceedings were invalid. Consequently appellants, in a cross-petition against the tax deed grantees, asked to have their title to the mineral rights quieted. The trial court declined this request and entered judgment for appellees thus holding the tax sale proceedings were constitutionally valid as to appellants.

In resolving this question we first note that Oklahoma has for many years derived a substantial portion of its income from the production of oil and gas. And the law has long recognized ownership of mineral rights under land as an estate separate from the surface rights. Ramey v. Stephney, 70 Okl. 87, 173 P. 72 (1918). Where there has been a severance of mineral rights, the owner thereof does not lose his right or estate by any length of non-use. Noble v. Kahn, 206 Okl. 13, 240 P.2d 757 (1952). "Oil and gas, while lying in the strata of earth from which they are produced, must be taxed as real property to the owner of the land, if the land is taxable, under which for the time being they may lie." In re Indian Territory Illuminating Oil Co., 43 Okl. 307, 142 P. 997 (1914). Once there is production of oil or gas, however, the mineral estate becomes severed for taxation purposes. Caney Production Co. v. Kane, Okl., 438 P.2d 938 (1967).

It cannot be doubted that state law, both statutory and decisional, is subject to compliance with the applicable provisions of the Federal Constitution as interpreted by the United States Supreme Court. The Fourteenth Amendment provides that no citizen of the United States shall by any state be deprived "of life, liberty, or property, without due process of law."

Basic to due process is a person's entitlement to notice of a proceeding affecting his rights, and a reasonable opportunity to be heard or to protect his interests. In recent years the United States Supreme Court has expanded not only the *scope* of the notice requirement, but has evolved a new approach to the constitutional sufficiency of the *means* of giving the required notice.

In regard to the scope of due process, the requirement of notice extends beyond strictly judicial proceedings. In Wisconsin Electric Power Co. v. City of Milwaukee, 352 U.S. 948, 77 S. Ct. 324, 1 L. Ed. 2d 241 (1956), the Court vacated the judgment of the Supreme Court of Wisconsin with directions to decide the involved notice issue in ac-

cordance with the conclusion reached in Walker v. City of Hutchinson, 352 U.S. 112, 77 S. Ct. 200, 1 L. Ed. 2d 178 (1956). The issue was whether the plaintiff's petition seeking to have a street improvement assessment voided on the ground that the city of Milwaukee had not afforded affected property owners due process of notice of the assessments merely by publishing same in a newspaper in compliance with the applicable provisions of the city charter and ordinances, was good as against a general demurrer. Upon remand the Supreme Court of Wisconsin complied and instructed the trial court:

> "In view of the determination made by the United States supreme court we hold that the constructive notice given by the defendant city by publication of the proposed special assessments against the plaintiff's lands did not meet the requirements of due process. Mullane v. Central Hanover B. & T. Co., 1950, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865, and Walker v. City of Hutchinson, 1956, 352 U.S. 112, 77 S. Ct. 200, 1 L.Ed.2d 178. Therefore, it was error for the trial court to have sustained the general demurrer interposed to plaintiff's amended complaint." Wisconsin Electric Power Co. v. City of Milwaukee, 275 Wis. 121, 81 N.W.2d 298 (1957).

So far as due process requirements are concerned we can make no substantial distinction between the placing of an assessment lien against one's property and foreclosure of a land tax lien against the interest of one, such as an owner of mineral rights, who has no primary liability for the payment thereof. And this is without regard to the question of what notice due process requires with respect to a tax delinquent surface owner who bears the primary responsibility of paying the assessed ad valorem tax.

The next question is, then, what quality of notice did the Due Process Clause require be given appellants? We think the answer is to be found in a series of cases commencing with Mullane v. Central Hanover Bank & Trust

Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950), wherein the court brushed aside the elusive distinction between "in rem" and "in personam" proceedings and held publication notice due trust beneficiaries whose identities and whereabouts could with due diligence be ascertained, was constitutionally inadequate, and this is so "not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." The Court recognized the "impracticality, if not the futility" of attempting direct notice to missing or unknown persons, but as to others, giving of notice only by publication is "to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact."

Quite prudently the Court declined to commit itself to a rigid formula for "achieving a balance between" the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." It did, however, conclude that when "notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."

The realistic fault found with publication notice was that "chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here [and in the case at bar], the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention."

Later in City of New York v. New York, New Haven & Hartford R.R. Co., 344 U.S. 293, 73 S. Ct. 299, 97 L. Ed. 333 (1953), the Mullane doctrine was followed with the observation that "Notice by publication is a poor and some-

times a hopeless substitute for actual service of notice. Its justification is difficult at best." Another New York statute providing only for publication and woodland postings of notice in proceedings to acquire a right to divert a stream was struck down in 1962 as constitutionally insufficient in Schroeder v. City of New York, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed 2d 255, 89 A.L.R.2d 1398 (1962).

A Kansas statute authorizing condemnation of land and proceedings to fix compensation therefor based on "notice" by publication in a local newspaper, was determined to be constitutionally insufficient regarding its notice requirements in Walker v. City of Hutchinson, 352 U.S. 112, 77 S. Ct. 200, 1 L. Ed. 178 (1956), the Court saying: "It cannot be disputed that due process requires that an owner whose property is taken for public use must be given a hearing in determining just compensation. The right to a hearing is meaningless without notice." As was mentioned earlier the rationale of this holding was subsequently applied to street improvement assessment noticing in a Wisconsin case. Wisconsin Electric Power Co. v. City of Milwaukee, supra.

Clearly the United States' highest tribunal is thoroughly committed (with but slight disagreement among the justices) to the abolition of constructive notice in circumstances where some form of actual notice, such as mailing, is reasonably available. This view mirrors language in Walker v. City of Hutchinson, supra, that, "It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property," and that "In too many instances notice by publication is no notice at all."

Appellees argue that to give written notice by mail to the severed mineral owners within this state, and particularly with regard to land in Seminole County would impose an almost insurmountable burden upon the county taxing authorities. While it is true that some additional effort would be required, still we do not think this alone affords

a sound reason for ignoring a fundamental constitutional right. Certainly under an earlier tax statute the problem was avoided by requiring the holder of a certificate tax deed to serve notice of its issuance on all owners of interest in the land. In this connection the Supreme Court of Oklahoma recognized the need for and importance of actual notice to severed mineral owners concerning claims adversely affecting their interests in Walker v. Hoffman, Okl., 405 P.2d 57 (1965), saying:

> "Thus, if the owner of severed minerals may be deprived of his mineral estate without notice of the application for certificate deed, and without notice of an adverse claim to the minerals (occupancy of the surface not being notice of an adverse claim to the minerals, Strickland v. Reeburgh, supra [Okl., 362 P.2d 1110], it would suggest that due process, for lack of notice, has been denied. Lind v. Stubblefield, supra [138 Okl. 280, 282 P. 365]."

Regarding failure to give notice to owners of severed minerals the court in Lind emphasized: "Notice in this connection is analagous to process in the courts; and it is well known that a judgment, even so solemn a document as it is, is absolutely void unless the defendant has been served with process, with personal service, or some substituted service, provided by law. Otherwise he is deprived of his property without due process of law."

Appellees point to the contrary holding in Jenkins v. Frederick, 208 Okl. 583, 257 P.2d 1058 (1952) and Cornelius v. Jackson, 201 Okl. 667, 209 P.2d 166 (1948). These cases were decided, however, before the views of the United States Supreme Court became definitively crystallized and before Walker v. Hoffman, supra. And while the latter case is distinguishable from both Jenkins and Cornelius, the language is so strong and so compatible with the law of the land that we think they would be decided differently today.

In our opinion the conclusion is inescapable that the tax foreclosure proceedings in question were carried out

without constitutional notice to appellants so that they were deprived of an opportunity to appear and protect their mineral interests. We hold, therefore, that insofar as the resale tax deed purports to transfer mineral rights to the land in question to the tax sale purchasers the same is invalid. The judgment of the trial court is accordingly modified by granting appellants judgment on their cross-petition quieting their title to the mineral rights in and under the Southwest Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 7 East, Seminole County, Oklahoma, as against appellees R. W. Garrett and R. H. Vaughn.

Affirmed as modified.

Bacon, J. and Neptune, J. concur.

---

## APPENDIX B

IN THE DISTRICT COURT OF SEMINOLE COUNTY
STATE OF OKLAHOMA.

| | | |
|---|---|---|
| CHRISTIE-STEWART, Inc, a Corporation, Plaintiff, | ) | |
| -vs- | ) | No. 29,092. |
| WALTER B. PASCHALL, Jr, And JOHN N. PASCHALL, Et Al., Defendants. | ) | |
| R. W. GARRETT AND R. H. VAUGHN, CROSS-DEFENDANTS. | ) | |

JOURNAL ENTRY OF JUDGMENT.

Heretofore, on September 8, 1969, the above entitled cause came regularly on for trial before the Court: Cross-

Petitioners, R. W. Garrett and R. H. Vaughn, appearing in person and by their attorney, T. H. Williams, Jr., and the substituted Defendants, Zelda Danna Paschall, as Executrix of the Estate of Walter B. Paschall, Jr., deceased and as sole devisee under the will of said deceased defendant, and Mary Louise Green Paschall, as Executrix of the Estate of John N. Paschall, deceased and Mary Louise Green Paschall, Jan Paschall Harden and John N. Paschall, Jr., as sole devisees under the will of said John N. Paschall, a deceased party defendant, and the defendant H. Grady Ross, either appearing in person and or by their Attorneys of record, William J. Legg, of Andrews, Mosburg, Davis, Elam, Legg and Kornfeld, and Jack Highley of Highley and Highley, and all of said parties announced ready for trial, upon the issues reserved in the Journal Entry of Judgment, as made and entered in this cause on June 14, 1965: whereupon the trial of said cause proceeded and all parties introduced their evidence, the Court heard the arguments of said parties, and at the conclusion thereof, granted said parties leave to submit written briefs, and then took the case under advisement.

Now, on this 27th day of October, 1969, said cause coming regularly on for the Court's decision and judgment, pursuant to due notice to all parties of record, and said parties appearing by their Attorneys of record, the court having read and considered the evidence, the written briefs and being fully advised in the premises, FINDS, CONCLUDES AND ADJUDGES AS FOLLOWS:

(1). The resale tax deed dated May 17, 1956, for delinquent taxes for the years 1952-53-54 and 1955, as filed for record June 6, 1956 and recorded in Book 890 Page 577, records of the County Clerk of Seminole County, conveying the:

> Southwest Quarter of the Northwest Quarter of Section 29, Township 9 North Range 7 East, Seminole County, Oklahoma,

unto the Cross-Petitioners herein, R. W. Garrett and R. H. Vaughn, as Grantees, be and the same is hereby decreed to be a valid resale tax deed, based upon full compliance with the tax sale proceedings statutes of the State of Oklahoma, and said deed hereby further decreed to have been executed, filed and recorded, and vested in said Grantees, the fee simple title in and to said lands and premises, as provided by 68 Okla. Stat. 1961, Sec. 432F.

(2). The Court Further Finds, Orders, Adjudges and Decrees that from the date of the recording of said resale tax deed, on June 6, 1956, that said Grantees therein, the Cross-Petitioners, R. W. Garrett and R. H. Vaughn, have been in the open, continuous, visible, notorious, exclusive and hostile possession of said lands and premises, receiving all of the rents, profits and income therefrom, and that said contesting substituted party defendants, are further forever barred and precluded by the statute of limitations, from seeking to assert the invalidity of said resale tax deed, as provided by 12 O.S. 1961, Sec 93(3) and (6).

(3). It is Further Ordered, Adjudged and Decreed by the Court that mineral deeds of record, under whom the above named contesting Defendants, claim title, described as follows:

> Mineral deed, dated July 8, 1926, recorded Book 235 Page 126. August 4, 1926.
> H. Grady Ross, Grantee.
>
> Mineral deed, dated October 10, 1930, recorded Book 443 page 135, December 12, 1932.
> Walter B. Paschall, Grantee,

be and the same are each hereby cancelled and removed from the records of the Seminole County Clerk, as clouds upon the fee simple title vested in said R. W. Garrett and R. H. Vaughn, under and by virtue of said resale tax deed.

(4). It is Further Ordered, Adjudged and Decreed by the Court that the following described oil and gas leases:

Lessor: H. Grady Ross, dated February 18, 1965, recorded February 25, 1965, Book 1064 Page 568.
Lessee: Christie-Stewart, Inc.

Lessors: Walter B. Paschall, Jr., and John N. Paschall, dated March 6, 1965, recorded March 26, 1965, Book 1066 page 193.
Lessee: Christie-Stewart, Inc.

be and the same are each hereby cancelled and removed from the records, as clouds upon the fee simple title of said R. W. Garrett and R. H. Vaughn.

(5). It is Further Ordered, Adjudged and Decreed by the Court that the following described oil and gas lease:

Lessors: R. W. Garrett and wife:
R. H. Vaughn and wife,
Dated November 6, 1963: Recorded November 13, 1963, Book 1045 Page 218,
Lessee: Christie-Stewart Drilling Company,

be and the same is hereby established and confirmed as the valid and existing oil and gas lease on the above described property, to the exclusion of the contesting defendants and all other persons, whomsoever, and that the leasehold estate of said Lessee, and its assignees, under and by virtue of said oil and gas lease is now forever quieted and the title thereto perfected.

(6). IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the fee simple title in and to the above described land is owned by the Cross-Petitioners, R. W. Garrett and R. H. Vaughn, in equal shares, an undivided one-half interest each, and the title and possession of said parties thereto, and in and to all of the oil, gas and other minerals lying in and under said lands

is hereby perfected, quieted and confirmed as above set forth, and no other persons have any interest, lien, possession or right of possession, and said above named Defendants, as claimants, by inheritance and devise of severed oil, gas and mineral rights in and to said lands, and each of them, in their representative capacities and for themselves, their heirs and assigns, are adjudged and decreed to have no right, title or interest in and to said minerals and mineral rights, and said original Defendants and the substituted party Defendants, and each of them and all persons claiming by, through or under them, or either of them, or their predecessors in the chain of title, be and they are hereby restrained and perpetually enjoined from claiming or asserting any right, title, interest or lien in and to said oil, gas and minerals now and hereinabove forever quieted and confirmed as a perfect fee simple title in said R. W. Garrett and R. H. Vaughn, subject only to the leasehold estate of the Plaintiff herein.

To all of which said Contesting Defendants except in open court and exceptions are allowed.

.....

DISTRICT JUDGE.

## APPENDIX C

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED
SUPREME COURT
OF OKLAHOMA
DEC 8 - 1972
ANDY PAYNE
CLERK

| | | |
|---|---|---|
| CHRISTIE-STEWART, INC., a corporation, Plaintiff, | ) | |
| -vs- | ) | No. 43,907 |
| WALTER B. PASCHALL, JR. and JOHN N. PASCHALL, et al, Defendants, | ) | |
| R. W. GARRETT and R. H. VAUGHN, Cross-Defendants. | ) | |

### NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Mary Louise Green Paschall, Jan Paschal Harden, John N. Paschall, Jr., The Fourth National Bank and Trust Company of Tulsa, Oklahoma, as Executor of the Estate of H. Grady Ross, deceased, and Zelda Danna Paschall, Appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Oklahoma reversing the judgment of the Court of Appeals, Division No. 2 of the State of Oklahoma, and affirming the judgment of the Trial Court, entered on September 26, 1972. This appeal is taken pursuant to Title 28 U.S.C.A. §1257(2).

The Clerk of the Supreme Court of Oklahoma will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States and include therein: (A) the full record on

appeal from the Trial Court; (B) all documents, orders, briefs and opinions considered or issued by the Court of Appeals, Division No. 2; (C) all documents, orders, briefs and opinions considered or issued by the Supreme Court of Oklahoma; (D) the writ granting certiorari and order and opinion of the Supreme Court of Oklahoma reversing the judgment of the Court of Appeals, Division No. 2 and affirming the judgment of the Trial Court; and (E) this Notice of Appeal.

The questions presented by this appeal are:

1. Whether the notice requirements of the tax sale statutes of the State of Oklahoma in effect at the time of the purported taking of the mineral rights of Appellants here under consideration (68 Okla. Stat. 1951, §381 et seq) were repugnant to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, the decision of the Supreme Court of Oklahoma being in favor of validity of such state statutes.

2. Whether adequate notice of an Original Tax Sale and a Tax Resale was given Appellants or their predecessors as owners of previously severed mineral rights under lands in the State of Oklahoma, consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

ANDREWS, MOSBURG, DAVIS, ELAM,
LEGG & KORNFELD

s/ William J. Legg
William J. Legg

s/ Mona S. Lambird
Mona S. Lambird
1800 United Founders Tower
Oklahoma City, Oklahoma 73112

HIGHLEY & HIGHLEY
Hightower Building
Oklahoma City, Oklahoma 73102

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that the following who are all parties required by law to be served in the above case, were this day mailed a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, postage prepaid:

Elliott, Woodard & Rolston
Attention: Joe S. Rolston III
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Jack Highley Esq.
Hightower Building
Oklahoma City, Oklahoma 73102

DATED this 4th day of December, 1972.

s/ Mona S. Lambird
Mona S. Lambird

**CERTIFICATE OF SERVICE**

I hereby certify that the following who are all the parties required by law to be served in the above case, were this day each mailed three copies of the foregoing Jurisdictional Statement, postage prepaid:

Elliott, Woodard & Rolston
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Jack Highley, Esq.
Hightower Building
Oklahoma City, Oklahoma 73102

DATED this ..... day of December, 1972.

---

William J. Legg

FILE COPY

Supreme Court, U.S.
FILED
FEB 23 1973
MICHAEL RODAK, JR., CLERK

In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

## No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

## MOTION TO DISMISS AND/OR AFFIRM OF R. H. VAUGHN AND R. W. GARRETT

JOE S. ROLSTON III
Suite 300, Local Federal Building
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Oklahoma City, Oklahoma 73102
*Counsel for Appellees*

February, 1973

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0036

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In the

Supreme Court of the United States

OCTOBER TERM, 1972

---

No. 72-922

---

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants*,

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

---

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

---

**MOTION TO DISMISS AND/OR AFFIRM OF R. H. VAUGHN AND R. W. GARRETT**

---

Appellees, R. H. Vaughn and R. W. Garrett, respectfully move, pursuant to Rule 16 of the Rules of this Honorable Court, that the appeal from the lower court in this case be dismissed and/or the judgment of the lower court be affirmed on the grounds that the issues presented do not present substantial federal questions and/or are so lacking in substance as not to warrant further briefing or oral argument, such issues having heretofore been determined by this Honorable Court.

## STATEMENT

Appellants in their Jurisdictional Statement filed herein only briefly discuss the procedures established in Oklahoma for the State to levy and collect ad valorem taxes which has always been recognized as one of the supreme powers of the State, essential to its maintenance.

In order for this Honorable Court to examine the issues presented by Appellants, Appellees strongly feel the Court should be made aware of the statutory procedures employed by the State in the exercise of its power to tax. Absent such information, the Court could not explore or determine whether the issues raised by Appellants present substantial federal questions. The following is, therefore, a brief outline of the procedures then followed in Oklahoma in the collection of ad valorem taxes.

The County Treasurer of each County is charged with the collection of taxes, and no demand is required, *but it is the duty of every person* to attend the Treasurer's Office and pay his taxes. Notwithstanding that no demand is necessary, the County Treasurer is required and does mail a Tax Statement to each taxpayer at his last known address, but failure of the taxpayer to receive such statement does not extend the date such taxes are due nor relieve the taxpayer of the duty and responsibility of paying the same.

Ad valorem taxes become due and payable on the 1st day of November of each year, and unless one-half are paid before January 1st, the entire tax becomes delinquent. If the first half of the taxes are paid, the second half becomes delinquent if not paid on or before April 1st of the following year.

If the taxes remain unpaid on the 1st day of April, the County Treasurer is required to advertise and sell for the County, such real estate for taxes. Appellants have set forth in their Jurisdictional Statement the statute then applicable to such original sale. The time and place of such sale was fixed by statute as the first Monday in November between the hours of 9:00 a.m. and 4:00 p.m., at the office of the County Treasurer. If there are no bidders at the public sale, the County Treasurer bids on the property on behalf of the County and the County acquires a Tax Lien on the real property.

Should any real estate purchased by the County at the original sale remain unredeemed for a period of two (2) years from the date of such sale, the County Treasurer is required to proceed to advertise and conduct a Resale of the property. The Appellants have set forth in their Jurisdictional Statement the statute then applicable to the notice required to be given at such resale. The time and place for such resale was fixed by statute as the second Monday of May between the hours of 9:00 a.m. and 4:00 p.m.

Within thirty (30) days after such resale, the County Treasurer is required to execute and deliver to the purchaser at said sale, a deed to the real property, which vests the grantee with absolute and perfect title in fee simple to said real property; and twelve (12) months after said deed shall have been filed for record no action shall be commenced to avoid or set aside said deed. Provided, that persons under legal disability shall have one year after removal of such disability within which to redeem said property.

## ARGUMENT

The Appellants do not and have not contended the applicable Oklahoma Statutes were not followed which resulted in the loss of their mineral interest, but contend the statutory notice requirements are repugnant to and insufficient under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Oklahoma Supreme Court has held the statutory method of assessment of land for ad valorem taxes in Oklahoma is *in rem* and although a mineral deed creates an interest in land, it does not follow that such an interest may be assessed and taxed separately from the land itself, when the mineral interest is non-producing. *Cornelius* v. *Jackson*, 201 Okla. 667, 209 P.2d 166. Further, it was the duty of the surface owner to attend and pay the taxes, and if not paid, the mineral holders have the right to pay the taxes and assert an equitable lien against the surface owner. *Cochran* v. *Godard*, 182 Okla. 506, 78 P.2d 692.

This Honorable Court in *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692, citing other authorities, stated, "All persons having property located within a State and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedure which they set up for those purposes. Proceeding for the assessment of taxes, the condemnation of land, the establishment of highways and public improvements affecting landowner are familiar examples."

The Oklahoma Supreme Court has likewise held that every person is charged under the law with notice and

knowledge as to whether his taxes are paid and if they are not paid, he is charged with the knowledge that the land may be sold in the manner provided by law, and the owner is charged by law with notice of the time and place where such sales are required to be made. *Ponder* v. *Eby*, 194 Okla. 407, 152 P.2d 268.

In the Statement of the Case, within the Jurisdictional Statement filed by Appellants, they state it was stipulated the mineral owners received no actual notice of either the original sale or the resale. No contention is made, however, that the Appellants were not well aware of the ad valorem taxes statutes which provided for the manner of sale and the time and place of such sale if the taxes were not paid.

Appellants rely on *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956); *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; and *Wisconsin E.P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956), to sustain the jurisdiction of this Honorable Court and to support a holding they were not accorded due process of law thereby presenting a substantial Federal Question to this Court. To the contrary, Appellees think such Authorities clearly support the issues raised do not present substantial Federal Questions, or are so lacking in substance as not to warrant further briefing or oral argument.

*Mullane* v. *Central Hanover Bank & Trust Co., supra*, did not in Appellees' opinion destroy or modify the traditional and acceptable use of notice by publication nor did it

require personal notice in order for due process to be accorded. Nor did the Court intend to relieve a person of the actual notice he was charged with under the law in order to protect his property, which is clearly manifested by the Court, citing *Anderson National Bank* v. *Luckett, supra,* in the *Mullane* opinion.

The concepts and reasoning of the *Mullane* decision as applied by the Court in *Covey* v. *Town of Somers, supra,* are not applicable since the Oklahoma Statutes protect a person under a legal disability and allow him or her to redeem the property within one year after removal of such disability.

In *Walker* v. *City of Hutchinson, supra,* and *Wisconsin Electric Power Co.* v. *City of Milwaukee, supra,* this Honorable Court held that the *Mullane* case established the rule that, if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interest and that it was impossible to set up a rigid formula as to the kind of notice that must be given; that the notice required will vary with circumstances and conditions.

The Appellants were charged with and had actual statutory notice of the time and place of the original sale and resale, but did nothing to protect their interest. For more than seven (7) years after their interest had been taken they did nothing and then the action instituted was not by Appellants but by the purchaser of an Oil and Gas Lease.

Appellees contend the issues of Appellants have heretofore been presented to this Court in *Cornelius* v. *Jackson,*

*supra,* and were rejected for want of a substantial Federal Question, 335 U.S. 906, 69 S.Ct. 412 (1949), and again in the case of *Robertson* v. *Lemmon,* 189 Kan. 619, 371 P.2d 175, and dismissed by this Court for want of jurisdiction, 375 U.S. 5, 84 S.Ct. 40 (1963). In each of these cases, the Supreme Courts of Oklahoma and Kansas cited, *Leigh* v. *Green,* 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 623, wherein this Honorable Court in discussing proceedings for the sale of land for taxes said:

> "Proceedings of this nature are not usually proceedings against parties; nor, in the case of lands or interest in lands belonging to persons unknown, can they be. They are proceedings which have regard to the land itself rather than to the owners of the land; and if the owners are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interest, and in order to make sure that the opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form."

It is further pointed out to the Court that since non-producing mineral interests are not separately taxed on an ad valorem basis, the names of the mineral owners do not appear on the County Treasurer's records, and to require the County Treasurer to search the County Clerk's records to ascertain the names of mineral owners would be unreasonable and impracticable in view of the fact that such owners may number in the hundreds. These are the practical matters which this Court recognized in the *Mullane* decision when it stated it has not hesitated to approve or resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning.

## CONCLUSION

Appellees respectfully submit this Appeal should be dismissed for lack of substantial Federal Questions and/or that said Federal Questions are so lacking in substance as not to warrant further briefing or oral argument and the appeal should be affirmed based upon existing Authorities.

Respectfully submitted,

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*Counsel for Appellees*

February, 1973

**CERTIFICATION OF SERVICE**

I hereby certify that the following, who are all the parties required by law to be served in the above case, were this day each mailed three (3) copies of the foregoing Motion to Dismiss and/or Affirm, postage prepaid:

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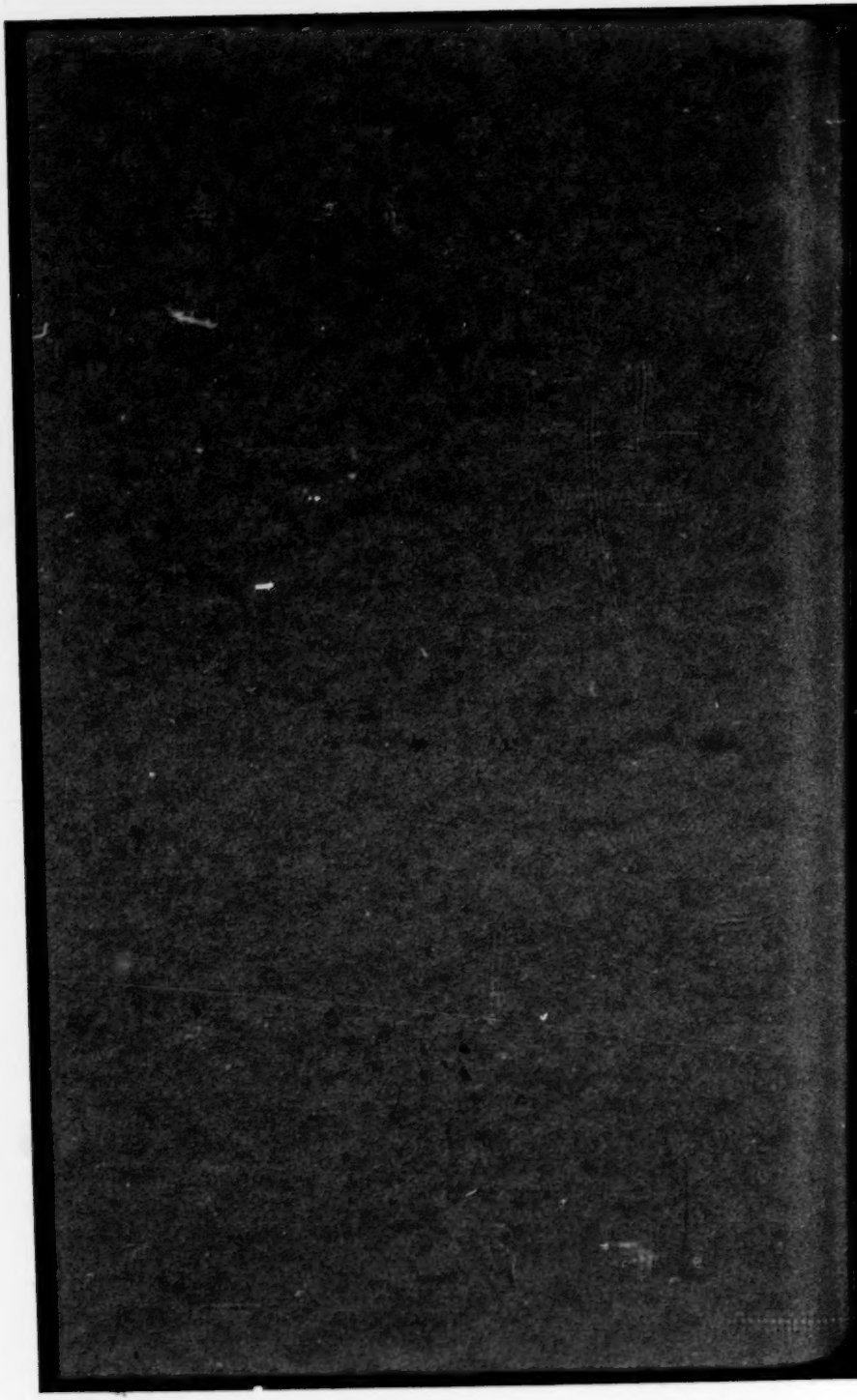

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In the

# Supreme Court of the United States

OCTOBER TERM, 1972

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## No. 72-922

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MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

---

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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## REPLY BRIEF—RESPONSE TO MOTION TO DISMISS AND/OR AFFIRM

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In the Argument presented in the Motion to Dismiss and/or Affirm filed herein, Appellees have cited certain state and federal decisions from which it is argued that notice to a real property owner is unnecessary before the taking of his property by taxing agencies. The case of *Leigh* v. *Green,* 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 623 (1904), is relied upon as the ultimate and base reference point from which the other cited cases stem.

*Leigh* v. *Green, supra,* was a historical precedent for the proposition, long adhered to, that the "most summary methods of seizure and sale for the satisfaction of taxes and

public dues have been held to be authorized, and not to amount to the taking of property without due process." This was because of the distinction clearly made in the case that the action was *in rem:* "The notice was good as against the world, and all that is necessary when the proceedings are *in rem.*" *Cornelius* v. *Jackson,* 201 Okla. 667, 209 P.2d 166 (1949), which is cited by Appellees as an Oklahoma precedent in their favor, uses the same rationale of *in rem* procedure and in fact relies upon *Leigh* v. *Green* in reaching the conclusion that the owner of the mineral interest in Oklahoma land there under consideration was not deprived of due process in the taking of his property through the tax sale. Likewise, Appellees cite Kansas law, spec. *Robertson* v. *Lemmon,* 189 Kan. 619, 371 P.2d 175 (1962), to the same effect, and that case also turns on the *in rem* distinction, quoting from *Leigh* v. *Green.*

It is important to note, however, that the United States Supreme Court, in *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), rejected the distinction between *in rem* and *in personam* proceedings insofar as it might affect constitutional guaranties: "... we think that the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state . . . Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the na-

ture of the case." The language and holding of *Mullane*, when coupled with the subsequent holdings of this Court based thereon, including *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956), *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178, and *Wisconsin E. P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956), make clear that after 1950 the taking of title to property through judicial or administrative action, including tax sales, must be attended with much more regard toward notifying the owner of the property that his rights are about to be changed or extinguished or transferred. State legislatures have responded by tightening statutory requirements for notice and state courts have recognized the changed standards in many decisions since *Mullane*. The result is that *Leigh* v. *Green*, and state and federal decisions based upon that view of due process requirements, have been either affirmatively or impliedly overruled.

Indeed, Kansas has in effect overruled *Robertson* v. *Lemmon, supra*, by the decision of *Chapin* v. *Aylward*, 464 P.2d 177 (1970), which deals with the same tax lien foreclosure procedure and recognizes the need for the changed result by reason of *Mullane* and *Walker*. It should also be considered that Kansas uses a judicial foreclosure procedure as distinguished from the Oklahoma administrative tax sale. Even with the protection of judicial procedure, full notice is of course required. The need for notice in administrative proceedings is at least as great when property rights are in jeopardy.

In Oklahoma, *Cornelius* v. *Jackson* has been diluted considerably by the decision by the Oklahoma Supreme

Court in *Walker* v. *Hoffman*, 405 P.2d 57 (1965). The latter case deals with a certificate tax deed as compared with a resale deed in the present case, and holds that notice to the mineral owner, separate from the surface owner, is essential to acquire the mineral rights through the tax sale. In the present case, the distinction between the resale and certificate deed was held to be sufficient to permit the resale deed to cover the minerals. And yet, in neither case did the mineral owner have notice of the tax sale and in both cases the county was the selling party.

The rationale of the Supreme Court of Oklahoma and the first and basic argument of Appellees, in the present case, is that the real estate tax statute itself is notice to all real property owners that if the taxes are not paid, the land will be sold. The same argument was available to hold the certificate tax deed valid as to the minerals in *Walker* v. *Hoffman*, but it was not given effect. The inconsistency is obvious, and creates a situation where denial of equal protection of the law exists as between mineral owners whose rights thus depend upon which tax foreclosure mechanism is used. The case of *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692, cited by Appellees, does not hold that the state statute itself gives ample notice of impending taking of property. The question there was simply how much notice is required where the property (inactive bank account) is presumed abandoned. The decision was merely that posting on the court house door was satisfactory under those circumstances for due process requirements. Furthermore it should be noted that the case does not involve a change of title to property but merely a transfer of possession from the bank to the state.

Without here attempting a full brief in opposition to the theory that the real estate tax statute itself is sufficient notice, we merely point out that to hold that a statute gives ample notice of the jeopardy one's property is in, is to assume the validity of the facts upon which the sale is made. Suppose on the contrary that the taxes had been paid and that an administrative error was responsible for the property's inclusion in the tax sale. Without notice of the proposed sale, there would be no immediate opportunity to controvert the basic premise of the tax sale and if the sale were later discovered, the right to redeem might have expired. It had in the present case before the sale was discovered by Appellants. That administrative errors occur occasionally is well known in Oklahoma as in other states and is made vividly (almost humorously) clear by the case cited by Appellees in their Motion to Dismiss and/or Affirm, *Ponder* v. *Ebey*, 194 Okla. 407, 152 P.2d 268 (1944). In that case the owner of the land had, on seven separate contacts with the County Treasurer, attempted to pay the ad valorem taxes which were assessed against his property, but by reason of seven successive administrative errors, it was nevertheless included in the tax sale and sold to defendant. The litigation which resulted from these administrative errors concluded favorably to the plaintiff, but the issue was in doubt for more than 4 years during the expensive judicial procedure necessary to remedy the errors.

For a more full treatment of the constitutional aspects of Oklahoma tax sale procedure, see 20 Okla. L.R. 365.

## CONCLUSION

This case presents constitutional questions concerning tax sales procedures used in a large number and wide geographical distribution of states. The question of constitutional notice is important in such procedures and the cases decided to this date leave the specific question in doubt. We respectfully urge, therefore, that this case be accepted for briefing and oral argument.

Respectfully submitted,

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March, 1973

**CERTIFICATE OF SERVICE**

I hereby certify that the following, who are all of the parties required by law to be served in the above case, were this day mailed three copies of the foregoing Reply Brief in Response to Motion to Dismiss and/or Affirm, postage prepaid:

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Dated this ..... day of March, 1973.

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William J. Legg

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In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

## No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA

## BRIEF OF APPELLANTS

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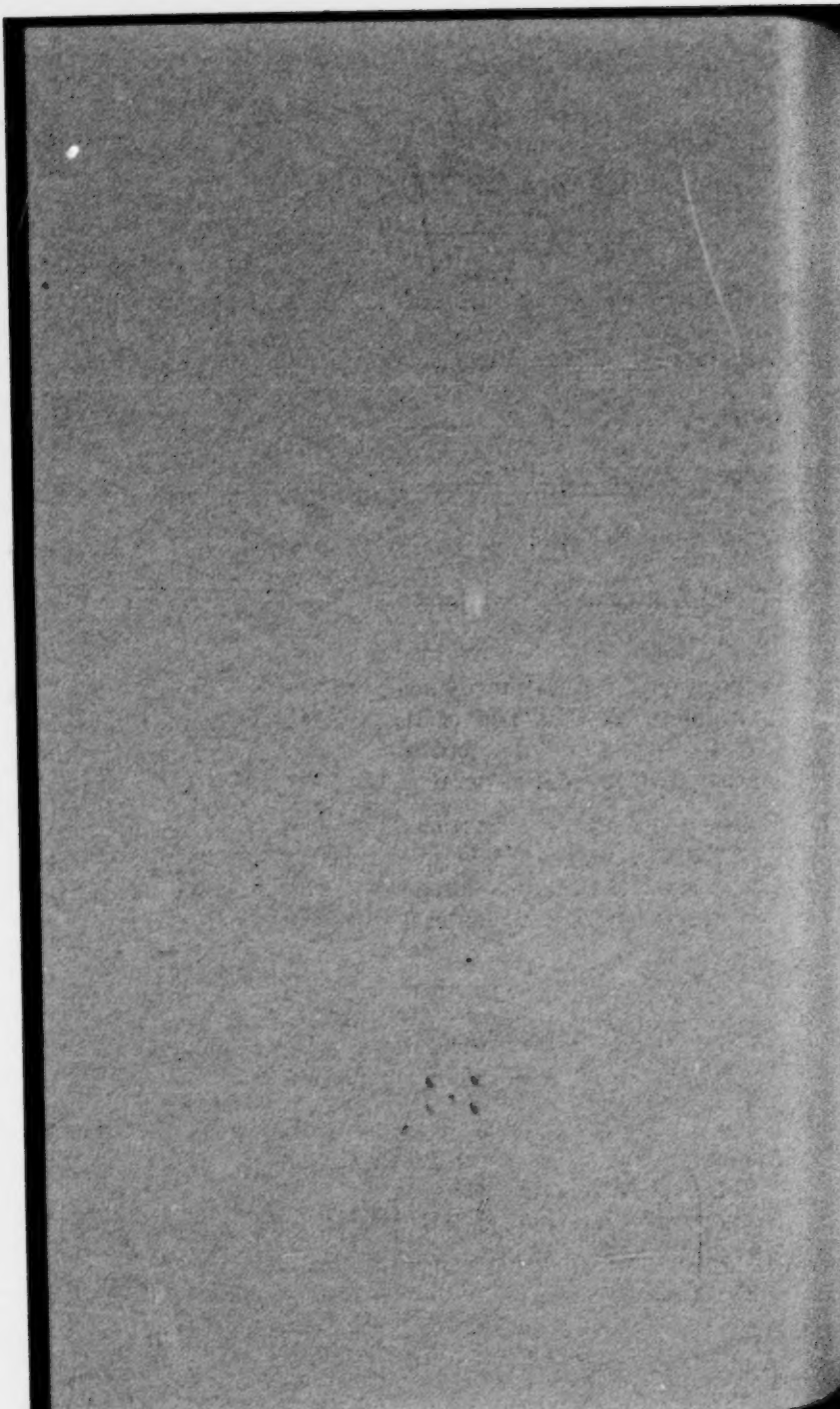

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In the
Supreme Court of the United States
OCTOBER TERM, 1972

No. 72-922

MARY LOUISE GREEN PASCHALL, JAN PASCHAL HARDEN, JOHN N. PASCHALL, JR., THE FOURTH NATIONAL BANK AND TRUST COMPANY OF TULSA, OKLAHOMA, as Executor of the Estate of H. Grady Ross, Deceased, and ZELDA DANNA PASCHALL,

*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., a corporation, R. W. GARRETT and R. H. VAUGHN,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

# BRIEF OF APPELLANTS

## THE OPINIONS BELOW

The Opinion of the Oklahoma Supreme Court is reported as *Christie-Stewart, Inc.* v. *Walter B. Paschall, Jr., et al.*, 502 P.2d 1265. It also appears at page i of the Jurisdictional Statement filed herein. The Opinion of the Oklahoma Court of Appeals, Division No. 2, was not reported,

but it appears at page vii of the Jurisdictional Statement filed herein. In addition, the trial court journal entry of judgment appears at page xv of the Jurisdictional Statement.

## JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C.A. §1257(2).

This is an appeal from a decision of the Supreme Court of Oklahoma reversing a judgment of the Court of Appeals, Division No. 2, of the State of Oklahoma and affirming the judgment of the trial court that a Resale Tax Deed executed in 1956 by Seminole County, Oklahoma officials was valid and conveyed to Appellees Garrett and Vaughn, the full fee simple title to forty acres of land, including the severed mineral rights separately owned of record by the predecessors in interest of Appellants. The tax sale was conducted under the procedures established in 68 Okla. Stat. 1951 §381, *et seq.* then in effect, and Appellants here challenge, and have challenged throughout the proceedings of this case, the adequacy of the notice of such tax sale as required by such statute to be given to Appellants or their predecessors in interest as owners of previously severed mineral rights, consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Oklahoma handed down its Opinion on September 26, 1972. The Notice of Appeal to this Court was filed by Appellants with the Clerk of the Supreme Court of Oklahoma on December 8, 1972.

With respect to Appellant's challenge of the validity of the above mentioned state statute in relation to the notice requirements thereof, on the ground that as applied to the taking of their mineral rights under the Resale Tax Deed such state statute is repugnant to the Constitution of the United States, the decision of the highest court of the state was in favor of its validity.

Probable jurisdiction was noted here on April 2, 1973.

## STATUTES

Because of the interrelationship between the "Original Sale" and the "Resale" under Oklahoma statutory law and decisions, we quote below the notice provisions of the tax sale statutes for both stages of the procedure, although the judgment appealed from applies only to a Resale Deed:

68 Okla. Stat. 1951 §382
(Original Sale)

"The treasurer shall give notice of the sale of real property for delinquent taxes by publication thereof once a week for three consecutive weeks, commencing after the first day of October, preceding the sale, in some newspaper in the county, to be designated by the board of county commissioners, and if the board of county commissioners shall fail to designate such paper, then in a paper to be selected by the treasurer. Such notice shall contain a notification that all lands on which the taxes of such fiscal year remain due and unpaid will be sold, and of the time and place of the sale, and shall contain a list of the lands to be sold and the amount of taxes due. The county treasurer shall charge and collect in addition to the taxes, interest and penalty the sum of twenty-five cents on each tract of real property other than town lots, and ten cents on

each town lot advertised for sale, which sum shall be paid into the county treasury, and the county shall pay the cost of the publication of such notice. But in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising. R.L. 1910, §7397."

68 Okla. Stat. 1951 §432b
(Resale)

"The County Treasurer shall give notice of the resale of such real estate by publication thereof once a week for four consecutive weeks preceding such sale, in some newspaper, having been continuously published one hundred four (104) consecutive weeks with admission to the United States Mails as second class mail matter, with paid circulation and published in the county where delivered in the mails in the county to be designated by the Treasurer; and if there be no paper published in the county, or publication is refused, he shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall contain a description of the real estate to be sold, the name of the owner of said real estate as shown by the last tax rolls in the office of the County Treasurer, the time and place of sale, a statement of the date on which said real estate was sold to the county for delinquent taxes, the year or years for which taxes have been assessed but remain unpaid, and that the same has not been redeemed for the period of two years from the date of sale, the total amount of all delinquent taxes, costs, penalties and interest accrued, due, and unpaid on the same, and that such real estate will be sold to the highest bidder for cash. It shall not be necessary to set forth the amount of taxes, penalties, interest and costs accrued each year separately, but it shall be sufficient to publish the total amount of all due and un-

paid taxes, penalties, interest and costs. Laws 1939, p. 546, §3; Laws 1941, p. 338, §1."

## STATEMENT OF QUESTIONS

1. Whether the notice requirements of the tax sale statutes of the State of Oklahoma in effect at the time of the purported taking of the mineral rights of Appellants here under consideration (68 Okla. Stat. 1951, §381, *et seq.*) were repugnant to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, the decision of the Supreme Court of Oklahoma being in favor of validity of such state statutes.

2. Whether adequate notice of an Original Tax Sale and a Tax Resale was given Appellants or their predecessors as owners of previously severed mineral rights under lands in the State of Oklahoma, consistent with the Fourteenth Amendment to the Constitution of the United States, the decision of the Supreme Court of Oklahoma being that notice given was adequate.

## STATEMENT OF THE CASE

At the times here involved, John N. Paschall and Walter B. Paschall, Jr., were the record owners in equal shares of undivided 15/16 mineral rights and H. Grady Ross owned the other undivided 1/16 mineral rights under the SW/4 NW/4 of Section 29-9N-7E, Seminole County, Oklahoma. Their muniments of title were recorded in various County offices in the Seminole County Court House. The surface was separately owned and the above named mineral owners had no interest in the surface. Appellants are successors in interest to such mineral owners.

The surface owner failed to pay the ad valorem taxes for the year 1952, and the County Treasurer included the land in the Original Sale on the first Monday of November, 1953. For a detailed analysis of Oklahoma tax sale procedures, see "Tax Sales and the Constitution," 20 Okla. L.R. 365. Publication notice thereof was given in accordance with the applicable statute (68 Okla. Stat. §382), none of the owners of interests in the land being named therein. No personal notice to the above named mineral owners was served upon them nor was there posting of notice on the land or elsewhere or mailing of notice to such mineral owners. The statutes did not require any such notice other than publication in the manner actually conducted. Seminole County became the purchaser at such Original Sale.

The land remained unredeemed, and after two years as prescribed by statute, was included in the Resale conducted on the second Monday in May, 1956. Notice of the Resale was given by publication in accordance with the applicable statute (68 Okla. Stat. §432b), only the surface owner being named therein. No personal notice to the above named mineral owners was served upon them nor was there posting of notice on the land or elsewhere or mailing of notice to such mineral owners. The statutes did not require any such notice other than publication in the manner actually conducted. At such Resale, Otis Garrett was the successful bidder and the Resale Deed was made out to R. W. Garrett and R. H. Vaughn (Appellees), who now claim the entire interest in the land including all the mineral rights.

A certified transcript of all the above mentioned tax sale proceedings on file in the office of the County Treasurer has been admitted in evidence in this case. The parties have stipulated that the above named mineral owners received no actual notice of either the Original Sale or the Resale. Walter B. Paschall, Jr., died testate in the year 1965, and John N. Paschall died testate in the year 1966, and their respective devisees have been substituted as parties Appellant. H. Grady Ross died testate in the year 1971, and the Executor of his estate has been substituted as a party Appellant.

In the year 1963, Christie-Stewart, Inc., Appellee, purchased an oil and gas lease from Mr. Garrett and Mr. Vaughn. Later, a separate lease was purchased by the same lessee from Walter B. Paschall, Jr., and John N. Paschall, and another from H. Grady Ross. Mr. Vaughn testified that no other lease had been previously executed by the tax sale purchasers, that they had conducted no previous exploration for oil, gas, or other minerals on the land, and that no production had been established in the interim between the tax sales of 1953-1956 and the leasing to Christie-Stewart, Inc. In order to determine that they had valid leasehold coverage prior to drilling a well on the land, Christie-Stewart, Inc., filed this action and an order of the trial court was thereafter entered quieting the oil and gas leasehold title in that corporation but reserving for future consideration the question of which set of claimants had title to the mineral rights and, consequently, which oil and gas lease was valid and which was void.

A well was drilled by Christie-Stewart, Inc., in 1965, and production was established which has continued to the present time. Royalties have been suspended by the purchaser of the production pending determination of the ownership of the mineral rights, *i.e.*, as between Mr. Garrett and Mr. Vaughn on the one hand and the Paschall devisees and the Estate of Mr. Ross on the other. It is this question that the District Court of Seminole County, Oklahoma, was asked to decide and this turns on the validity of the taking of the mineral rights under the Original Sale of 1953 and the Resale of 1956. The trial court entered its Judgment on November 3, 1969, that the Resale Tax Deed of 1956 was valid and conveyed the full fee simple title including the mineral rights here in dispute (Jurisdictional Statement p. xv).

It is the position of the Paschall devisees and the Ross Estate, and has been since the inception of this litigation, that the tax sale proceedings in both the Original Sale of 1953 and the Resale of 1956 failed to include the essential element of constitutional notice to the then owners of the mineral rights, a separate and severed property interest. Such property owners were thereby denied due process of law, and therefore the purported taking of their property was void *ab initio*.

The federal questions stated above were raised in the trial court by Amendment to Answer filed by Appellants, and argued and briefed in the trial court (Transcript of Trial Court Proceedings, pages 18 and 19) and adversely ruled upon by the trial court. These federal questions were thereafter the basis of the appeal Brief of Plaintiffs in

Error and decided in favor of Appellants by the Oklahoma Court of Appeals, Division No. 2, the opinion (Jurisdictional Statement p. vii) dealing specifically with such questions. Thereafter, the Supreme Court of Oklahoma again reviewed the case and reversed the judgment of the Oklahoma Court of Appeals on the specific federal questions stated above, affirming the judgment of the trial court (Jurisdictional Statement p. i).

## BRIEF AND ARGUMENT

### Summary

The real estate tax statutes of Oklahoma require that before a Resale, a notice shall be published containing the name of the owner of the real estate. The Supreme Court of Oklahoma has previously held that such a requirement with respect to a Certificate Tax Deed, as distinguished from a Resale Deed, makes mandatory the naming of the separate mineral owners in the published notice or the mineral rights are not effectively taken by the tax sale. Appellants' predecessors in interest were owners of severed mineral interests and were not named in the published notice with respect to the Original Sale or the Resale. Thus, the notice requirements of the Oklahoma tax sale statute itself were not followed.

However, even if such statutory requirements were sufficiently followed, the notice required by the statute is not adequate under the Fourteenth Amendment to the United States Constitution. Prior decisions of the United States Supreme Court held that publication notice is not sufficient when more efficient means of notification are

available. When the acting entity has on its books the names and addresses of the property owners, to whom notice of the impending action could be mailed, publication notice is not adequate. Here, such names and addresses were readily available in the same court house. Consequently, published notice in a local newspaper, not containing the names of the severed mineral interest owners, was not adequate under the Constitution.

## PROPOSITION I

**NO STATUTORILY ADEQUATE NOTICE OF THE ORIGINAL TAX SALE AND OF THE TAX RESALE WAS GIVEN APPELLANTS' PREDECESSORS, AS OWNERS OF PREVIOUSLY SEVERED MINERAL RIGHTS.**

The statutes applicable to the Original Sale and Resale here under consideration were 68 Okla. Stat. 1951, §381, *et seq.*, of which §382 and §432b are quoted above. These statutes establish a purely administrative procedure by the county officials to enforce tax liens. No judicial procedure is involved. For the Original Sale in 1953, the Oklahoma statutes required the County Treasurer to advertise for three weeks in the county where the land lies, with a description of the lands to be sold and the amount due on each tract. Neither personal notification to the owner, nor posting, nor mailing to the last known address was required, and in fact the name of the owner of the land was not required to be shown in the published notice of sale.

In this case, the Original Sale of 1953 was conducted after publication notice only, and in that notice no owners' names were shown. It was stipulated that neither Appellants nor their predecessors in interest, the mineral own-

ers, had actual notice of the sale. Seminole County became the purchaser at the Original Sale by reason of absence of an adequate bid by the public.

For the Resale of 1956, the Oklahoma statutes required that if the land remained unredeemed or unsold to a certificate holder after two years, the County Treasurer must advertise for four weeks in the county where the land lies, describing the land and showing the name of the owner. There was no requirement for personal service on the owner or mailing to him.

In this case, the Resale of 1956 was conducted after publication notice only, and only the surface owner was named in the advertisement, not Appellants or their predecessors in interest, the mineral owners. It was stipulated that neither Appellants nor their predecessors in interest, the mineral owners, had actual notice of the Resale.

It is the testimony in this case that the tax sale purchasers at the Resale of 1956 (Appellees Garrett and Vaughn) filed their deed and took possession of the surface of the land through a tenant, but they made no attempt to take possession of the minerals thereunder either by executing a lease or physically exploring for minerals under the land. This was the status until Christie-Stewart, Inc., prevailed upon them to execute the oil and gas lease of 1963. Thereafter, Christie-Stewart, Inc., also obtained an oil and gas lease from the Paschalls and Mr. Ross, Appellants' predecessors, and this action was filed in 1965. It cannot be argued therefore that any possession of the minerals was obtained by the tax title claimants prior to this case

coming to issue, since only the surface owner's name was included in the Resale publication notice and only the surface was actually possessed thereafter by the tax sale claimants.

We call the Court's attention to the case of *Walker* v. *Hoffman*, 405 P.2d 57 (Okla. 1965). The case involved the question of whether a severed mineral interest owner was deprived of his property by a Certificate Tax Deed issued after an Original Sale. A Resale was not involved, but like the Resale procedure the statute concerning the issuance of the Certificate Tax Deed (68 Okla. Stat. 1961, §451) required notice to the "owners" of the land. The Supreme Court of Oklahoma held that the defendant, who owned only a severed mineral interest at the time of the tax sale, was an "owner" as contemplated by the statute and entitled to notice. Having failed to give such owner notice, the procedure resulting in the Certificate Tax Deed could not divest the mineral owner's title. Possession of the surface for the period of limitations did not preclude the mineral owner from asserting his title. Thus, title to the previously severed mineral interest was quieted in the defendant.

The statutory procedure for a Resale, 68 Okla. Stat. 1951, §432b, which was applicable in 1956, required that the notice published prior to the Resale "shall contain . . . the name of the owner of said real estate. . . ." This is substantially the same requirement with respect to which the Supreme Court of Oklahoma held in the above cited *Walker* v. *Hoffman* case that the severed mineral rights were not taken, *i.e.*, notice to the surface owner was not

notice to a severed mineral interest owner. Here, the Paschalls and Mr. Ross were not informed directly, and the only notice required by the statute, notice to "the owner" by publication, made no attempt to include them by naming them. Their names and whereabouts were easily ascertainable from the Seminole County records in the same court house as the office of the County Treasurer, as shown by the pleadings in this case. In this regard, it is interesting that the Appellee oil company, Christie-Stewart, Inc., found all parties when they desired to purchase oil and gas leases. Consequently, it is obvious that the very statutory procedure required for the efficacy of the tax sale was not sufficiently followed to take the severed mineral rights.

The Oklahoma Supreme Court in its opinion in this case has differentiated between notice required to be given "owners" in Certificate Tax Deed situations as in the *Walker* v. *Hoffman* case, and to be given "owners" in the Resale situation here. The reasoning fails to consider whether under the Constitution a valid differentiation can be made between the notice requirements of the two statutory levels of tax sales. In both instances, the county is the acting entity seeking to collect taxes, and the same property owner is being subjected to deprivation of his property. Is it constitutionally sound to hold that individual notice at one level is necessary while general notice at another level is adequate, assuming, as in this case, that no actual or constitutionally-adequate constructive notice has been given to the landowner at any prior level of the tax sale mechanism? Yet, on this very differentiation, the mineral owners in this case have been held by the Oklahoma

Supreme Court to have lost their property while a mineral owner retained his property in the *Walker* v. *Hoffman* case.

As stated in *Backus* v. *Fort Street Union Depot Co.*, 169 U.S. 557, 42 L.Ed. 853, 18 S.Ct. 445 (1898), "An act of the legislature which in terms gave one individual certain rights and denied to another similarly situated the same rights might be challenged on the ground of unjust discrimination and a denial of the equal protection of the laws." *Cf. Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U.S. 459, 81 L.Ed. 1223, 57 S.Ct. 838 (1937); and *Morey* v. *Dowd*, 354 U.S. 457, 1 L.Ed.2d 1485, 77 S.Ct. 1344 (1957).

**PROPOSITION II**

**NO CONSTITUTIONALLY ADEQUATE NOTICE OF THE ORIGINAL TAX SALE AND OF THE TAX RESALE WAS GIVEN APPELLANTS' PREDECESSORS, AS OWNERS OF PREVIOUSLY SEVERED MINERAL RIGHTS.**

Whether or not the Oklahoma statutory procedure was sufficiently complied with, it is the position of these Appellants, as successors in interest of the severed mineral interest owners prior to the Resale of 1956, that they would be deprived of their property without due process of law if the Resale Deed to Mr. Garrett and Mr. Vaughn is deemed to cover and include the mineral rights. In *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the Supreme Court of the United States held that mere publication notice in a local newspaper was not sufficient notice prior to a determination of property rights when more efficient means of notification are available. In the opinion, Justice Jackson stated:

> ". . . when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."

The Opinion describes the distinguishing feature of inadequacy of notice as "not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand."

The *Mullane* case has been followed in several decisions by the United States Supreme Court: *City of New York* v. *NY, NH & H R.R.*, 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953); *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956); *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); *Wisconsin E. P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956); *Schroeder* v. *City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255, 89 A.L.R.2d 1398 (1962). That the theory of the *Mullane* case is applicable to tax sales is made clear in the *Covey* v. *Town of Somers* decision cited above, and that it is applicable to administrative procedures, as well as judicial action, is shown by the *Wisconsin E. P. Co.* v. *City of Milwaukee* decision. For a more full treatment of this subject, see "Tax Sales and the Constitution," 20 Okla. L.R. 365.

The *Mullane* opinion language seems particularly applicable to the present case:

> "Against this interest of the State (to be able to determine interests or claims of individuals who are un-

known or outside of the State) we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis* v. *Ordean*, 234 U.S. 385, 394, 58 L.Ed. 1363, 1368, 34 S.Ct. 779. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

"In some situations the law requires greater precautions in its proceedings than the business world accepts for its own purposes. In few, if any, will it be satisfied with less. Certainly it is instructive, in determining the reasonableness of the impersonal broadcast notification here used, to ask whether it would satisfy a prudent man of business, counting his pennies but finding it in his interest to convey information to many persons whose names and addresses are in his files. We are not satisfied that it would."

"As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency."

"It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of

adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint."

Analyzing the notice requirements of the Oklahoma tax sale procedures in the light of United States Supreme Court cases cited above, especially the facts and language of the *Mullane* case, leads to one inescapable conclusion: Constitutionally adequate notice is not required by the Oklahoma statutes, and in this case was not given, to take the property of severed mineral interest owners where no duty to pay taxes exists. In Oklahoma, real estate taxes are payable exclusively by the surface owner; *In re Indian Territory Ill. Oil Co.* (1914), 142 Pac. 997. The statutes effective at the time of the Original Sale in 1953, here under consideration, required only publication notice containing the description of the lands to be sold and the amount of taxes due, without naming the owner of the land. No posting, mailing, or individual notification of any sort was required. The facts show that no notice was ever brought home to Appellants or their predecessors in interest during the Original Sale procedure and insufficient notice was re-

quired by the statute. At both the Original Sale and the Resale levels, the statutes required only publication notice, and this does not fulfill the requirements of the *Mullane* decision and subsequent cases, because it is not the most efficient method available to apprise the owner, especially the mineral owner, that his property is about to be taken for non-payment of taxes. The mineral owners' names and whereabouts were easily ascertainable from the county's own records.

The rationale of the Supreme Court of Oklahoma in its Opinion in this case (Jurisdictional Statement, p. i) is that whether or not the statute requires notice to the mineral owners, the real estate tax statute itself is sufficient notice to all real property owners that if the taxes are not paid, the land will be sold. The same argument was available to hold the Certificate Tax Deed valid as to the minerals in *Walker* v. *Hoffman, supra,* but it was not given effect. The inconsistency of the Oklahoma Supreme Court between the reasoning in that decision and in this is obvious on that point as well as on the point of whether a severed mineral interest owner is an "owner" entitled to be named in publication notice. This inconsistency is such that a denial of equal protection of the law exists as between different mineral owners, whose rights thus depend upon which tax foreclosure mechanism is used, *i.e.,* a certificate tax sale or a resale.

To hold that a statute gives ample notice of the jeopardy one's property is in, is to assume the validity of the facts upon which the sale is made. Suppose on the contrary that the taxes had been paid and that an administrative

error was responsible for the property's inclusion in the tax sale. Without notice of the proposed sale, there would be no immediate opportunity to controvert the basic premise of the tax sale and if the sale were later discovered, the right to redeem might have expired. It had in the present case before the sale was discovered by Appellants. In fact, Oklahoma law is very severe in this respect: No action to avoid the tax deed may be commenced after one year from the recording of the tax deed; 68 Okla. Stat. 1951, §455 (now §24345). However, possession is also necessary in addition to the recording of the tax deed; *Fickel* v. *Webb*, 293 Pac. 206 (Okla. 1930). In this case, the tax deed purchaser did not take possession of the severed mineral rights of Appellants.

That administrative errors occur occasionally is well known in Oklahoma as in other states and is made vividly (almost humorously) clear by the case of *Ponder* v. *Ebey*, 194 Okla. 407, 152 P.2d 268 (1944). In that case the owner of the land had, on seven separate contacts with the County Treasurer, attempted to pay the ad valorem taxes which were assessed against his property, but by reason of seven successive administrative errors, it was nevertheless included in the tax sale and sold to defendant. The litigation which resulted from these administrative errors concluded favorably to the plaintiff, but the issue was in doubt for more than four years during the expensive judicial procedure necessary to remedy the errors.

The only authority cited by the Oklahoma Supreme Court, in its Opinion in this case, for the proposition that the statute itself gives notice to the property owner that

his property will be sold, is the case of *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692. However, that case does not hold that the state statute itself gives ample notice of the impending taking of property. The question there was simply how much notice is required where the property (an inactive bank account) is presumed abandoned. The decision was merely that posting on the court house door was satisfactory under those circumstances for due process requirements. Furthermore, it should be noted that the case does not involve a change of title to property, but merely a transfer of possession from the bank to the state. Consequently, it does not reach the question of taking property without due process as is here involved.

An argument against the necessity of notice in tax lien foreclosures is found in *Leigh* v. *Green*, 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 623 (1904). That case was an historical precedent for the proposition, long adhered to, that the "most summary methods of seizure and sale for the satisfaction of taxes and public dues have been held to be authorized, and not to amount to the taking of property without due process." This was because of the distinction clearly made in the case that the action was *in rem:* "The notice was good as against the world, and all that is necessary when the proceedings are *in rem.*" It is important to note, however, that the United States Supreme Court, in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), specifically rejected the distinction between *in rem* and *in personam* proceedings insofar as it might affect constitutional guaranties: ". . . we think

that the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state . . . Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." The language and holding of *Mullane*, when coupled with the subsequent holdings of this Court based thereon, including *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956); *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; and *Wisconsin E. P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956), make clear that after 1950 the taking of title to property through judicial or administrative action, including tax sales, must be attended with much more regard toward notifying the owner of the property that his rights are about to be changed or extinguished or transferred. State legislatures have responded by tightening statutory requirements for notice and state courts have recognized the changed standards in many decisions since *Mullane*. The result is that *Leigh* v. *Green*, and state and federal decisions based upon that view of due process requirements, have been either affirmatively or impliedly overruled; *Walker* v. *City of Hutchinson*, *supra*.

An example of the modern views of fair dealing when government desires administratively to affect rights held

by individuals is the situation of a determination of non-compliance with the requirements of a license and consequent cancellation thereof by the issuing agency. The Administrative Procedure Act, 5 U.S.C.A. §558, forbids *ex parte* action in these words:

> "Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—
>
> (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
>
> (2) opportunity to demonstrate or achieve compliance with all lawful requirements."

The Oklahoma Supreme Court itself has so recognized with respect to judicial procedure, as commanded in *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713, and in its new procedural Rule No. 16 requiring a "diligent and meaningful search of all reasonably available sources" including in cases affecting interests in land, "local assessor's records, local county treasurer's records, local deed records as to the property involved for return address on recorded instruments, and local probate records if applicable." This procedure is now necessary when a private individual seeks to affect property which might be claimed by another. However, in its opinion in this case, the same Court relieves the county from any requirement to check any information source, opining that the tax statute itself is sufficient notice to private landowners. As stated in *Walker* v.

*City of Hutchinson, supra,* "There is nothing peculiar about litigation between the Government and its citizens that should deprive those citizens of a right to be heard."

Rather than base its decision here, that the statute gives sufficient notice in the case of tax sales, on the "elusive and confused" distinctions between *in rem* and *in personam* proceedings, the Oklahoma Supreme Court has stated that the statute fixes the exact time and place of sale and further notice is therefore not required. The opinion of the Supreme Court of Oklahoma states that this is a material difference as compared with the facts of the *Mullane* case. A close examination of the *Mullane* opinion, however, will disclose that, on the contrary, generally the same type of statute was involved. The statute provided:

> "10. Not less than twelve nor more than fifteen months after the date on which a common trust fund is established, and triennially thereafter, each trust company maintaining any such common trust fund shall file an account of its proceedings in respect thereof either in the office of the clerk of the supreme court in the county in which such trust company maintains its principal office or in the office of the surrogate of such county and shall within five days thereafter furnish the superintendent with a copy thereof. Upon filing such an account, such trust company shall file therewith a petition for its judicial settlement and shall proceed with such judicial settlement in the supreme court if the account is filed in the office of a clerk of that court or in the surrogate's court if the account is filed in the office of the surrogate. N.Y. Banking Laws §100-c (Ch. 687, L 1937, as amended by Ch. 602 L 1943 and Ch. 158, L 1944)."

it then provided that a general notice of the hearing should be published for four weeks in a newspaper to be designated by the court, without naming the interested parties. Also as required by the statute, the trust company had previously sent each beneficiary a copy of those provisions of the Act relating to the sending of the notice itself and to the judicial settlement of common trust fund accounts. Thus, the beneficiaries of the common trust fund knew statutorily when and where the accounting would be settled. However, the opinion states "Certainly sending (beneficiaries) a copy of the statute months and perhaps years in advance does not answer" the purpose of a "serious effort to inform them personally of the accounting, at least by ordinary mail to the record address" when as in that case and in this, the acting entity "has on its books the names and addresses" of the property owners.

The proposition put forth by the Oklahoma Supreme Court, that the statute itself is adequate notice, was not argued by either side below. That proposition, if validated here, will permit forfeiture without the necessity of a determination of facts. That may be necessary in some situations involving the public health, spoilage, or moveables, although the latter are protected from pre-judgment replevin; *Fuentes* v. *Shevin*, 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1983. Land, however, is definitely not in that category and delay to protect constitutional rights is not destructive of the county's interests. The Oklahoma Court is saying that the land owner knows whether or not he paid his taxes and if he did not, he has no complaint if the county sells his land. But this assumes the county has made no error in

reaching its determination that the taxes were not paid. How can that determination be controverted or remedied if the owner is not notified of the proposed sale? Many other applications of that proposition could be made by an all-powerful state. Only slight modification or extension of the theory could destroy all civil rights by dispensing with the necessity of a day in court when life, liberty or property is in jeopardy; *Armstrong* v. *Manzo* (involving children), 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965); *Robinson* v. *Hanrahan* (involving jailed persons), 409 U.S. 38, 34 L.Ed.2d 47, 93 S.Ct. — (1972); *Fuentes* v. *Shevin* (involving debtor consumers), *supra* (1972). On that abhorrent theory, all property, all rights, are jeopardized under government by fiat.

## CONCLUSION

Since in this case neither constructive notice was effectuated nor actual notice received, due process of law was not carried out as to the rights of the mineral owners. The tax sale, if it is construed as affecting the mineral rights, constituted an attempted taking of the mineral owners' property without due process of law. Accordingly, the tax sale should be declared ineffective as to the severed mineral rights, the judgment below should be reversed, and title to the mineral rights should be quieted in

the devisees of John N. Paschall and Walter B. Paschall, Jr. as to 15/16 interest, and in the Estate of H. Grady Ross as to 1/16 interest.

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In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

## No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

# BRIEF OF APPELLEES

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In the
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APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

# BRIEF OF APPELLEES

## SUPPLEMENTAL STATEMENT OF CASE

Appellants' Statement of Case which appears at pages 5, 6, 7, 8 and 9 of their Brief filed herein has omitted certain dates and undisputed findings of fact which Appellees deem germane to the issues presented. These are as follows:

That the Resale Tax Deed of Appellees was filed for Record June 6, 1956, at 1:00 p.m. (Appendix pages 8 and 9).

That from the date of the recording of said Resale Tax Deed, Appellees have been in open, continuous,

visible, notorious, exclusive and hostile possession of said lands and premises, receiving all of the rents, profits and income therefrom. Jurisdictional Statement, Appendix B, Judgment of the District Court of Seminole County, paragraph (2), page XVII.)

That the action of Appellants to cancel and set aside the Resale Tax Deed of Appellees was not commenced until March 9, 1965 (Appendix page 7).

## BRIEF AND ARGUMENT

### ANSWER TO APPELLANTS' PROPOSITION I

### THAT NO STATUTORILY ADEQUATE NOTICE OF THE ORIGINAL TAX SALE AND OF THE TAX RESALE WAS GIVEN APPELLANTS.

Appellants set out in their Brief *in toto* two Oklahoma Statutes, 68 Okla. Stat. 1951 § 382 and 68 Okla. Stat. 1951 § 432b, and contend that neither give adequate notice. Section 382 (original sale) is the notice requirement to be given by the County Treasurer if the ad valorem taxes are unpaid on the first day of April of any year. The sale which results from this publication notice does not divest the owner of his property, but merely creates a lien upon his land for the delinquent taxes. 68 Okla. Stat. § 388 (now 24316) specifically provides that the purchaser at such sale shall have only a lien on the land for the delinquent taxes. Thus, the original sale constitutes only a sale of the county's right to collect the ad valorem tax due on the property and no notice of any kind need be given the owners since no loss of property occurs at that time; the owners still fully retaining the right to redeem by payment of the taxes.

If the owner does not redeem the taxes within two years, the holder of the tax certificate or lien pursuant to the provisions of 68 Okla. Stat. § 451 (now 24323) may apply and receive a Tax Deed to the property. Appellants do not contend that the notice requirements of this statute do not fully meet all requirements of due process since written notice is required to be served upon the Owner of the land if he is within the State and also upon the person in possession of the land.

It was to the above notice and not the notice required by 68 Okla. Statutes § 382 (Resale) which Oklahoma Supreme Court directed its attention in the case of *Walker* v. *Hoffman*, 405 P.2d 57 (Okla. 1965), which is cited by Appellants in support of their First Proposition. This case also involved a Certificate Tax Deed and not a Resale Tax Deed.

The Appellants contend in their Brief the *Walker* v. *Hoffman* case, *supra*, is authority for the fact that served mineral owners are entitled to notice under 68 Okla. Stat. § 432b (Resale). This conclusion is not valid for two reasons: (FIRST) The language of the two statutes is in no way similar. Section 451 requires the applicant for a Tax Deed to cause written notice of such application to be served upon the owner of the land if within the State, and if not, by publication. The Supreme Court of Oklahoma in the case of *Martin* v. *Atkinson, Warren & Henley Co.*, 195 Okla. 19, 154 P.2d 945, held that the term "Owner" as used in Section 451 included the owner of an interest in the minerals and that notice must be served him before his rights can be extinguished by a Certificate Tax Deed. Section

432b requires that the notice contain *"the name of the owner of said real estate as shown by the last Tax Rolls in the office of the County Treasurer."* In *Herndon* v. *Pigg*, 190 Okla. 402, 124 P.2d 425, the Supreme Court of Oklahoma held the Legislature intended by this language that the Treasurer, in preparing resale notice, should look only to rolls in his office and should not be compelled to search records of County Clerk in determining in whose name ownership should be listed.

Further, the *Walker* case may be distinguished since Section 451 made notice a condition precedent to acquire the interest of the owner and thus an absolute estate in fee simple in the land. It was stipulated in the *Walker* case the notice required by the Statute was not given and, therefore, the interest of the severed mineral owner was not extinguished by the Certificate Tax Deed. The Court further distinguished the two Statutes citing *Jenkins* v. *Frederick*, 208 Okla. 583, 257 P.2d 1058, and *Cornelius* v. *Jackson*, 201 Okla. 667, 209 P.2d 166. (Appeal to United States Supreme Court was dismissed, 335 U.S. 906, 69 S.Ct. 412, 93 L.Ed. 440) when it discussed the Resale Statute stating:

> "Where a statute authorizes a lien for ad valorem taxes to be foreclosed by advertisement and sale by the County Treasurer, the proceedings thereunder relate to the land itself, rather than the owner thereof, and where the Statute provides for notice and gives the right to any person owning the land, or any interest therein, to redeem the land from taxes at any time before a Tax Deed is issued by the County Treasurer, the Statute affords due process of law, and the owner of the non-producing oil, gas and other mineral rights, whose interest in the land, in the name of the owner

of the surface, is assessed, advertised, and sold for delinquent ad valorem taxes, is given equal protection of the law and is not deprived of property without due process of law."

(SECOND) Under Section 451, an individual is seeking to divest the owner of his property, the applicant having theretofore paid the County for the delinquent taxes and having acquired a lien on the land. Thus it is not the County as the acting entity who is seeking to collect taxes which the Statute requires to give notice to the owner, but the individual asserting the lien.

Conversely, it is the County that is required to give notice under Section 432b (Resale) which still seeks to collect its taxes, having been required by law to acquire the lien upon the land in the event there were no bidders offering the amount due at the original sale. (68 Okla. Stat. § 391).

It should be noted the individual purchaser of a Tax Certificate is free to apply for a Certificate Tax Deed at any time after two years, limited only by a ten-year statute of limitations upon the certificate. Since the timing for the application rests wholly in the holder of the Tax Certificate, the burden of providing adequate notice and due process is imposed upon the individual applicant.

The time and the place of the resale is governed and fixed by statute on the second Monday in May. (68 Okla. Stat. § 432, now 24329 [Note in 1961 this date was changed to the second Monday in June]).

This Honorable Court in *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692, citing other authorities, stated:

> "All persons having property located within a State and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedures which they set up for those purposes. Proceedings for the assessment of taxes, the condemnation of land, the establishment of highway and public improvements affecting landowners are familiar examples."

The Oklahoma Supreme Court has likewise held that every person is charged under the law with notice and knowledge as to whether his taxes are paid and if they are not paid, he is charged with the knowledge that the land may be sold in the manner provided by law, and the owner is charged by law with notice of the time and place where such sales are required to be made. *Ponder* v. *Eby*, 194 Okla. 407, 152 P.2d 268.

No contention is made by Appellants they were not well aware of the ad valorem tax statute, which provided for the manner of sale and time and place of such sale if the taxes were not paid.

*Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, relied on by the Appellants, did not, in Appellee's opinion, destroy or modify the traditional and accepted use of notice by publication nor did it require personal notice in order for due process to be accorded. Nor did the Court intend to relieve a person of the actual notice he was charged with under

the law in order to protect his property, which is clearly manifested by the Court, citing *Anderson National Bank* v. *Luckett, supra,* in the *Mullane* opinion.

Appellees submit the statutory requirements of notice imposed by the Legislature upon the State for due process in exercising its taxing power in the administrative collection of its taxes and those imposed upon the individual may vary and yet both be constitutionally sound.

Appellants in their Brief invite the Court's attention to an article in the Oklahoma Law Review, "Tax Sales and the Constitution," 20 Okla. L.R. 365, which is written by Appellants' counsel, William J. Legg. On page 376, in discussing the publication notice prior to the original sale, the author makes the following statement:

> "Also, under both old and new procedures, only a lien on the land results. Because this stage of the tax sale proceeding, would not be a taking, the due process notice requirements would not be applicable."

It would appear, therefore, the only issue before this Honorable Court is whether statutorily adequate notice was given at the Tax Resale.

## ANSWER TO PROPOSITION II

**THAT NO CONSTITUTIONALLY ADEQUATE NOTICE OF THE ORIGINAL TAX SALE AND OF THE TAX RESALE WAS GIVEN APPELLANTS.**

In view of the admission by Appellants' counsel, that due process notice requirements would not be applicable to the original sale because no taking results therefrom, Appellees will confine their argument to the Resale Tax Notice.

Appellants' argument is based solely on this Honorable Court's decision in *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, and the subsequent cases cited in their Brief.

It is admitted in Appellants' Brief ad valorem taxes are payable exclusively by the surface owner and are so assessed. The Oklahoma Supreme Court has also held the owner of a severed mineral interest in order to protect his interest has the right to pay the taxes and assert an equitable lien against the surface owner. *Cochran* v. *Godard*, 182 Okla. 506, 78 P.2d 692. In addition, the mineral owner might purchase the delinquent taxes at any stage of the proceeding, and thereby assert the statutory lien arising from the original sale.

This Honorable Court in *Mullane* stated:

> "This Court has not hesitated to approve or resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning."

In Oklahoma, the County Treasurer has available in his records only the name and address of the surface owner. Appellants would like the Court to believe that the names and addresses of the severed mineral owners are readily available on the books of the "acting entity." This is not the case. It is true that the names of most of the severed mineral owners might be obtained from a search of the records of the County Clerk's office by checking from the time of the original patent to date, all deeds and mineral conveyances filed and indexed against a given property description.

The manpower required to conduct such a search covering each parcel of real property to be sold at a Resale is beyond estimation, and would not necessarily result in a complete list of mineral owners or their addresses since most conveyances do not disclose the addresses of the parties.

Oklahoma is a major producer of oil and gas. Being aware of this fact, its citizens have throughout the years reserved and conveyed minerals. It is the rule rather than the exception in Oklahoma, that most parcels of real estate have some or all of the minerals severed. Thus, if the County Treasurer were required to make a search of the records outside of his office, and then notify such parties personally, it might well turn out that hundreds or even thousands of notices would be required. The cost of postage alone could exceed the amount of tax.

Appellees respectfully suggest this Honorable Court carefully weigh and consider the burden it would place upon the County Treasurer and the State against the ex-

isting procedure which compels the holder of a severed mineral interest to inquire every two or three years in order to protect his interest.

The Resale Notice Statute was amended in 1965, and now requires in addition to publication, that notice be mailed to the owner as shown by the Tax Rolls in the office of the County Treasurer. It, therefore, appears the Legislature recognized how impractical and unreasonable it would be to require the County Treasurer to search beyond his own records.

Appellants argue the Oklahoma Supreme Court has recognized the changes in concept required by *Mullane* by its decision in *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713. This is quite true. The Court also recognized the practical problems which might result in attempting to apply those new concepts and principles to existing statutory procedures long employed and relied upon when it stated:

> "Mindful of our duty to guard against any attempt to upset settled titles by imposition of new requirements which did not exist before, we declare that all procedural modifications enunciated herein shall not be construed as invalidating the publication process in this case or in any case in which the trial Court's judgment shall have been rendered before this opinion becomes final."

Appellees submit the argument of Appellants is moot, since the record discloses the claim of Appellants is barred by the Statute of Limitations.

The Judgment of the trial court (Appendix B, in the Jurisdictional Statement, page XV), made a specific finding

that Appellees had been in adverse possession of the subject property since June 6, 1956, and that Appellants' claim was barred by the Statute of Limitations as provided by 12 Okla. Stat. Sec. 93 (3) and (6).

12 Okla. Stat. Section 93 (3) and (6) provides:

> "Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter;
>
> "(3) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the Tax Deed.
>
> "(6) Numbered paragraphs 1, 2 and 3, shall be fully operative regardless of whether the deed or judgment or the precedent action or proceedings upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of one (1) year from and after its effective date. (Laws 1949)."

The one-year Statute of Limitations cited in Appellants' Brief does not apply if the sale is void because statutory procedure was not followed.

The record further discloses, Appellees did assert possession to the mineral interest of Appellants, by the execution of an Oil and Gas Lease in November of 1963, approximately eighteen (18) months before any action was taken by Appellants to attack the Resale Tax Deed at issue, which had been of record almost nine (9) years.

This Honorable Court has consistently held the States may constitutionally impose Statutes of Limitations upon claimants in order to avoid the litigation of stale and vexatious claims. *Vance* v. *Vance*, 2 S.Ct. 854, 108 U.S. 514, 27 L.Ed. 808; *Atchafalaya Land Co.* v. *F. B. Williams Cypress Co.*, 42 S.Ct. 284, 258 U.S. 190, 66 L.Ed. 559; *Chase Securities Corp.* v. *Donaldson*, 65 S.Ct. 1137, 325 U.S. 304, 89 L.Ed. 1625; and *Kavanaugh* v. *Noble*, 68 S.Ct. 235, 332 U.S. 535, 92 L.Ed. 150.

The Oklahoma Supreme Court has not hesitated to impose the Statute of Limitations against a former mineral owner in cases involving Resale Tax Deed where the evidence established the holder of the Tax Deed had been in exclusive continuous possession for the statutory period. *Jenkins* v. *Frederick*, 208 Okla. 583, 257 P.2d 1058; *Colonial Royalties Co.* v. *Sitler*, Okla., 298 P.2d 1060.

Even if Appellees were to concede to the argument and theory of Appellants that due process was not accorded under the statutory notices given, the application of the same without regard to the Statute of Limitations would create total and utter chaos among those holding Tax Titles in the State of Oklahoma. Appellants' theory is the sale is void *ab initio* and the limitation period would never run.

To embrace Appellants' concept would open to attack every Tax Certificate and Resale Tax Deed issued in the State of Oklahoma since Statehood. The flood of litigation would inundate the Courts, deprive owners of their homes, and jeopardize the County in the collection of ad valorem taxes.

In *Schroder* v. *City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255, 89 A.L.R.2d 1398, this Honorable Court clearly sets forth the rule established in *Mullane* when it stated:

> "The General Rule that emerges from the Mullane Case is that Notice by Publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question."

The record is undisputed that the County Treasurer does not have the names and addresses of severed mineral owners in his records since such interest is taxed against the surface owner. To require the County Treasurer to employ a staff of attorneys or other qualified personnel to engage in a title search of the voluminous records of the County Clerk's office would create an unconscionable burden upon the County without due regard for the practicalities and peculiarities of the case.

## CONCLUSION

The Publication Notice given which contained the name of the owner as disclosed by the records of the County Treasurer, but not the names of the severed mineral owners whose names were not known or very easily ascertainable, under the circumstances, constituted due process of law. Accordingly, the Resale Tax Deed should be declared valid and the judgment of the Supreme Court of Oklahoma affirmed.

Respectfully submitted,

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In the

# SUPREME COURT OF THE UNITED STATES

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## No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA

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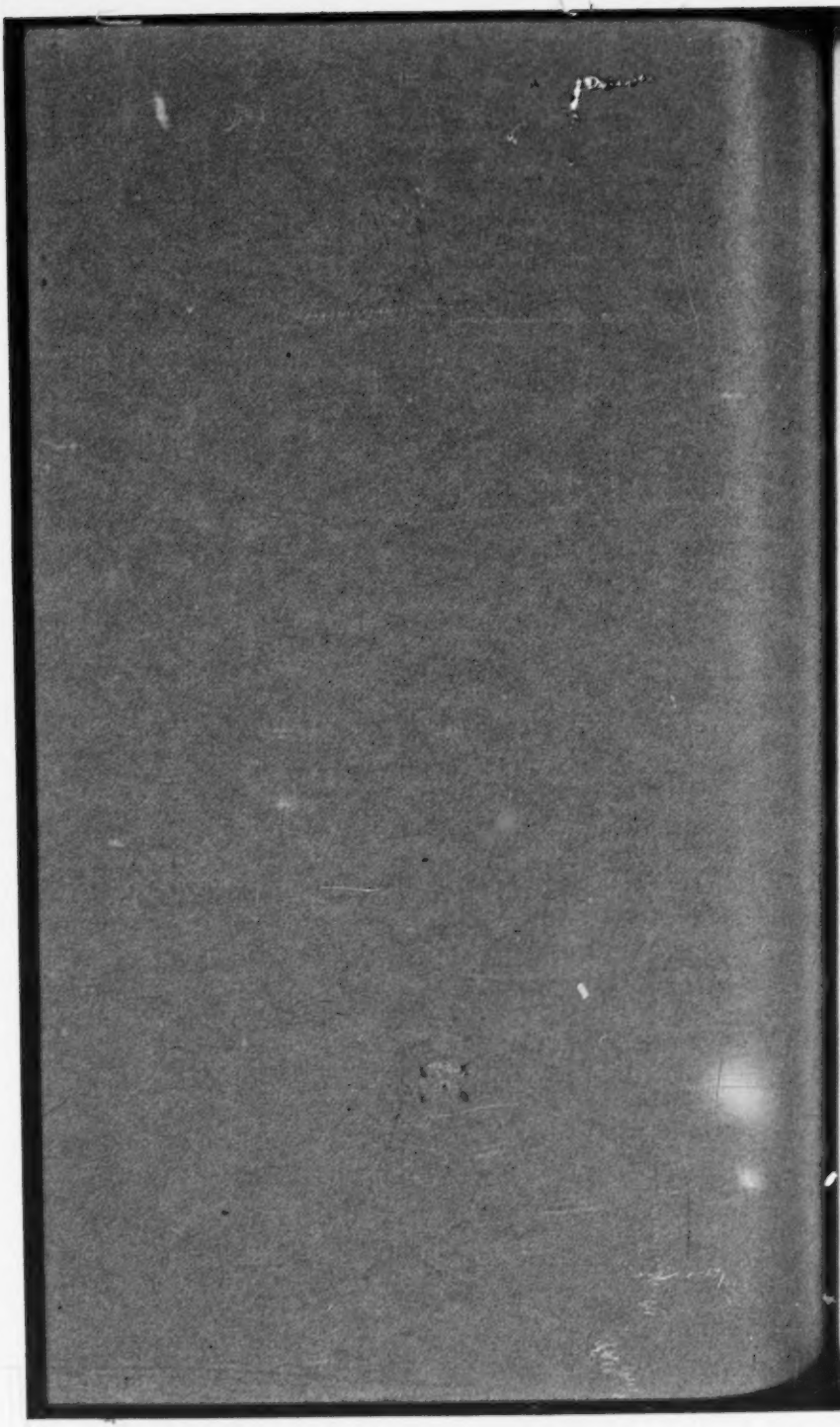

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# In the
# Supreme Court of the United States
OCTOBER TERM, 1972

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## No. 72-922

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MARY LOUISE GREEN PASCHALL, JAN PASCHAL HARDEN, JOHN N. PASCHALL, JR., THE FOURTH NATIONAL BANK AND TRUST COMPANY OF TULSA, OKLAHOMA, as Executor of the Estate of H. Grady Ross, Deceased, and ZELDA DANNA PASCHALL,

*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., a corporation, R. W. GARRETT and R. H. VAUGHN,

*Appellees.*

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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## REPLY BRIEF OF APPELLANTS

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### SUPPLEMENTAL STATEMENT OF CASE

In the Appellees' Brief, supplementary facts are stated n pages 1 and 2. With regard to the filing of the Resale Tax Deed and taking possession it should be made clear that ossession was taken of the surface only and that there was o attempt to drill or otherwise explore for the oil, gas or ny other minerals underlying the surface of the land in

question. This was established by the testimony of Mr. Vaughn, one of the Appellees himself (Transcript, on the fourteenth page thereof). Appellants make no claim to the surface.

It should also be clarified that Appellants did not commence this action, but were named defendants in an action filed in January, 1965, by Christie-Stewart, Inc. The service of process in this case was the first notification to Appellants that their mineral rights were claimed by third parties, which claims they immediately challenged by appropriate pleadings timely filed in this case.

## BRIEF AND ARGUMENT

### Re: Proposition I

In their Brief filed herein, Appellees make reference to the inapplicability of the statutory procedures with regard to the Original Sale, concerning Proposition I that no statutorily adequate notice was given Appellants. The pertinence of these procedures and the reason for inclusion of reference thereto in Proposition I of the Brief of Appellants, is this: Prior to the Resale by the County Treasurer, there is no statutorily required notice, adequate under the Constitution, that the landowners' property is in jeopardy. If the statute concerning the Original Sale had provided notice, it would be difficult to argue that the subsequent Resale was made without affording the owner with constitutional notice. However, since no notice was given at the time of the Original Sale, we are therefore entitled to analyze the notice provided for the Resale in terms of whether Constitutional requirements are met.

Under Oklahoma statutes, if the tax sale procedure goes from the Original Sale to a Certificate Tax Deed by reason of a private individual having purchased the tax lien certificate at the Original Sale, the Oklahoma Supreme Court holds that personal notice to the severed mineral owner is necessary or the Certificate Tax Deed will be deemed to cover the surface only; *Walker* v. *Hoffman*, 405 P.2d 57. But, the same Court holds here that if the tax sale procedure goes from the Original Sale to a Resale, where the County is the seller again, no such notice is required. The reasons for this inconsistency were therefore analyzed in the original Brief of Appellants.

In the discussion of the *Walker* decision on page 4 of the Brief of Appellees, *Jenkins* v. *Frederick*, 208 Okla. 583, 257 P.2d 1058, and *Cornelius* v. *Jackson*, 201 Okla. 667, 209 P.2d 166, are cited. On the point of constitutionality, the *Jenkins* case quotes from the *Cornelius* opinion and this same quotation is carried in the Brief of Appellees. However, the *Cornelius* case was decided in 1948, prior to the decision of the United States Supreme Court in *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Furthermore, the quotation used is clearly based upon the view that tax sale procedures are *in rem* rather than *in personam*, and therefore personal notice is not constitutionally required. That view was specifically renounced in the *Mullane* opinion:

> ". . . we think that the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state."

The Brief of Appellees, on page 6, also quotes from *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692. That case was decided in 1944, also prior to *Mullane*, but is referred to in the latter opinion. The quotation used in support of the position taken by the Brief of Appellees, that the Oklahoma tax sale statute itself is sufficient notice for the individual property owner when *government* is the acting entity, is as follows:

> "All persons having property located within a State and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedures which they set up for those purposes. Proceedings for the assessment of taxes, the condemnation of land, the establishment of highway and public improvements affecting landowners are familiar examples."

Notwithstanding that language from the *Mullane* opinion, it is interesting that "proceedings for the (foreclosure of) assessment of taxes" were later held to require personal notice in *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956), and in *Wisconsin E.P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956); that "the condemnation of land" requires personal notice in *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); and that "the establishment of highway and public improvements" necessitates personal notice to the affected landowners in *Schroeder* v. *City of New York*, 371 U.S. 208, 9 L.Ed.2d 255, 83 S.Ct. 279, 89 A.L.R.2d 1398. It would be idle to challenge the legal concept that property owners "must take note of (the State) statutes affecting the control or disposition of such property

and of the procedures which they set up for those purposes," but where life, liberty, or property is in jeopardy through judicial or administrative action, overriding constitutional precepts come into play. We quote again from *City of Hutchinson:* "there is nothing peculiar about litigation by the Government and its citizens that should deprive those citizens of a right to be heard."

It is the position of Appellants that the distinction drawn by the Oklahoma Supreme Court between the requirements of notice as between a Certificate Tax Deed and a Resale Deed is a denial of equal protection of the laws; *Williams* v. *Rhodes*, 393 U.S. 23, 21 L.Ed.2d 24, 89 S.Ct. 5 (1968); *Levy* v. *Louisiana*, 391 U.S. 68, 20 L.Ed.2d 436, 88 S.Ct. 1509 (1968); *Stanley* v. *Illinois*, 405 U.S. 645, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972.) The rights of severed mineral interest owners are made to depend on whether the taking to which they are subjected is under the Certificate Tax Lien foreclosure procedure in which they are entitled to personal, individual notice, or under the Resale procedure in which they are *not* entitled to personal, individual notice, according to the Oklahoma Supreme Court.

**Re: Proposition II**

The Brief of Appellees asserts two primary arguments in response to Proposition II that no constitutionally adequate notice of the Original Tax Sale and of the Tax Resale was given Appellants' predecessors, as owners of previously severed mineral rights. Appellees assert:

(1) It would be too burdensome on the County to give notice individually to owners of severed mineral interests; and

(2) The claim of Appellants is barred by the statute of limitations, and if it is not applied, vested titles will be upset.

(1) Appellees insist how enormous a labor it would be to determine ownership of severed mineral interests in Seminole County. It is not a geographically large area of land nor is it heavily populated. It is the former national domain of the Seminole Nation of Indians, one of the Five Civilized Tribes, removed from Florida to this place in the mid-nineteenth century. All of the county offices are located in the County Court House at Wewoka, a two-story building of modest proportions, built in 1939, with a jail on top. It is shaded by old trees in the sidewalked lawn on the front. One of these trees is the Seminole Whipping Tree, a large pecan, to which aberrant tribesmen were tied toward the turn of the century for appropriate ministrations. A miniature Statue of Liberty has been erected near the entrance. The County Treasurer's office is not only in this same building with the land ownership records of the County Clerk, but is just a few steps down the hall on the first floor. When Christie-Stewart, Inc. desired to purchase an oil and gas lease from all possible claimants to the land here in controversy, it found little difficulty in determining who and where they were, both the tax deed owners (Appellees) and the owners of severed mineral interests (Appellants). How this is such a large order for the County is difficult to understand.

Under the *Mullane* decision, notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the pro-

ceedings in question; *Schroeder* v. *City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255, 89 A.L.R.2d 1398. The Supreme Court of Oklahoma has required close investigation of public records to assure that private parties litigant shall have opportunity to appear in proceedings affecting their legally protected interests; *Bomford* v. *Socony Mobil Oil Company*, 440 P.2d 713 (1969), and Rule No. 16 of the Rules for the District Court of Oklahoma, promulgated by the Supreme Court of Oklahoma, Title 12 Okla. Stat. 1971 (1972 Supp.), Chap. 2, Appendix. These pronouncements of the Oklahoma Supreme Court require, where title to land is affected, a search of the local assessor's records, the local county treasurer's records, the local deed records as to the property involved for return addresses on recorded instruments, and local probate records if applicable, in order to determine the names and addresses of the affected parties so that notification can be given them. Only after these investigations prove fruitless, is publication notice by itself reliable. This is in exact compliance with *Mullane*. If any one of such sources had been searched in this case, notification could have been given Appellants' predecessors which would have resulted in actual notice that their severed mineral rights were about to be taken for nonpayment of taxes. Nothing of the sort was done. Appellees now say that such a procedure may be constitutionally necessary for private litigants, but it would be too onerous for *government* to bear. They ask that two different rules apply: one for private litigants, onerous as it might be for them, and a different rule for governmental instrumentalities whereby government need not comply with constitutional requirements because it would be too onerous. Merely

to state such a proposition suggests sufficient dangers of government invasion of private rights as to shock the conscience. In *Stanley* v. *Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), the State had pointed out the burden of having to give parents notice of proceedings to determine placement of children in foster homes. To that argument, this Court stated:

> ". . . it may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.
>
> "Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand."

(2) With respect to the application of the statute of limitation, this argument was not made in the briefs below. Neither the opinion of the Supreme Court of Oklahoma nor that of the Oklahoma Court of Appeals deals with this mat-

ter. In the Motion to Dismiss and/or Affirm filed herein in response to the Jurisdictional Statement of Appellants, Appellees made no argument that any statute of limitation applied. Appellees now raise the argument as a lastditch effort to prevent consideration of the more important constitutional issues on which this case was actually decided below and upon which this Court has accepted jurisdiction. At this late juncture, it would seem the point should be considered waived.

In cases where the question of notice is raised, application of limitation statutes or laches is frequently involved. It is only natural that this is true, because if proper notice had been given, a timely opportunity to be heard would have occurred. Failure to give notice creates the very situation in which the party who was not given notice must come into court "late," asking his remedy belatedly. Thus, for the Court to countenance the assertion of limitations under such circumstances would be to accept the poisoned apple whereby all constitutional rights could be eliminated. Of what value is a constitutional right to notice if, after notice is unconstitutionally withheld, the offended party cannot receive his rights because of mere passage of time before asserting them when he finally discovers the offense?

The Supreme Court of the United States has given little weight to such arguments. In *City of New York* v. *NY, NH & H R.R.*, 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953), the railroad sought to bar the City's liens because they had not been asserted within the statutory time after publication notice. This Court rejected that argument and held in favor of the City and the enforcement of its liens.

In *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956), the taxpayer's right of redemption expired before her Committee became aware her property was being sold for unpaid ad valorem taxes. This Court held that notice given to a known incompetent was insufficient to bar her rights when later discovered. In *Walker* v. *City of Hutchinson*, 352 U.S. 112, 1 L.Ed.2d 178, 77 S.Ct. 200 (1956), the time authorized by statute had elapsed for an appeal from the compensation awarded in a condemnation. This Court held publication notice was not sufficient to bar the landowner's right to a hearing on just compensation. In *Wisconsin E.P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956) (refer to the appealed Wisconsin Supreme Court opinion reported at 76 N.W.2d 341), the property owner was assessed for street improvements and he claimed he had no actual notice of the assessment until after it was too late to protest, only publication notice having been given. This Court required the Wisconsin Court to review its affirmance of the assessment in the light of *Mullane*. In *Schroeder* v. *City of New York*, 371 U.S. 208, 9 L.Ed.2d 255, 83 S.Ct. 279, 89 A.L.R.2d 1398 (1962), the landowner had filed no claim for damages from the diverting of a river until after the three-year statutory limitation had elapsed. Only publication notice had been given. The City argued that the limitation barred her rights. This Court held that the limitations could not be asserted because the notice given was not adequate.

In all of the cited cases, this Court was faced with the argument made here by Appellees, that the offended parties acted too late to be permitted to assert their rights—that a

statutory limitation runs against the assertion of those rights. The case with facts closest to the instant case is *Schroeder*. There, the City had changed the course of the Neversink River, which flowed through appellant's land, after giving the statutory notice by publication in a small town newspaper without including her name therein. Posting of such notice also occurred but not on appellant's land. The statute limited a claim for damages to be filed within three years and there are indications that during that three years the flow of water through appellant's land must have made apparent the diversion upstream: "The majority opinion in the New York Court of Appeals seems additionally to have drawn support from an assumption that the effect of the City's diversion of the river must have been apparent to the appellant before the expiration of the three-year period within which the statute required that her claim be filed. 10 N.Y.2d, at 526, 527, 225 N.Y.S.2d, at 213, 180 N.E.2d 568. There was no such allegation in the pleadings, upon which the case was decided by the trial court. But even putting this consideration aside, knowledge of a change in the appearance of the river is far short of notice that the City had diverted it and that the appellant had a right to be heard on a claim for compensation for damages resulting from the diversion. That was the information which the City was constitutionally obliged to make at least a good faith effort to give personally to the appellant—an obligation which the mailing of a single letter would have discharged."

That set of circumstances is similar to the present case in this: Appellees base their argument in reliance upon a

five year statute of limitation on their occupation of the surface of the land here in question. It is clear that during that time they made no attempt to explore or exploit the minerals under the land. They executed and recorded only one oil and gas lease during that time and that is the one challenged in this case. Appellants owned only the severed mineral rights and at no time made any claim to the surface. Accordingly, occupation of the surface by Appellees or anyone else would have put Appellants on no notice or apprehension concerning their severed mineral rights. Had Appellants driven by the land or examined it inch by inch, nothing they could have found on the land would have shown them any indication other than the surface was being occupied by Appellees just as the surface had previously been occupied by others before. Therefore, the possession of the surface that Appellees rely upon to invoke the five year statute of limitations is not applicable because as this Court pointed out in *Schroeder,* the information which the County was "constitutionally obliged to make at least a good faith effort to give personally to the (predecessors of) Appellans—an obligation which the mailing of a single letter would have discharged," was that a sale of the land was to be made for non-payment of taxes and that the sale would be deemed to include the severed mineral rights.

*Walker* v. *Hoffman,* 405 P.2d 57 (Okla. 1965), here again is of interest. In the opinion, the Oklahoma Supreme Court attempts to differentiate between procedure with regard to the Certificate tax lien foreclosure and the Tax Resale, holding that in the first, possession of the surface shall not be considered possession of the minerals while in the Resale situation, possession of the surface may be con-

sidered possession of the minerals. The reason given is that a Resale notice describes the land to be sold, albeit without naming the owners thereof and without requiring personal notice to them in any other way. This describing of the land, according to the Oklahoma Supreme Court, is sufficient to put all persons on notice that the purchaser at the Resale will receive "a virgin and fee simple title to the described tract, including the minerals." That result is based upon the difference between *in rem* and *in personam* procedures which *Mullane* specifically rejected insofar as requirements of the Fourteenth Amendment to the Federal Constitution. Such a diffentiation between statutory procedures creates a situation which denies equal protection of the law to holders of mineral rights affected by a Resale as distinguished from holders of mineral rights affected by a Certificate tax lien, because in the Resale such holders are not entitled to personal notice whereas in the Certificate situation the same type of owner is so entitled. Furthermore, the equal protection of the law is denied by the interpretation that the statute of limitation applies in the Resale situation to severed mineral interest owners through possession of the surface, whereas in the Certificate situation, possession of the surface does not include the minerals. All of this is indicated by the *Walker* decision as applied to the instant case.

Appellees complain that the application of the *Mullane* concept of notice requirements would upset titles based upon tax deeds. Appellees' Brief quotes from *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713, to that effect. The quotation deals with the imposition of new requirements

for showing compliance with procedural due process. The *Bomford* opinion had affirmed the lower court's decision that due process by publication service in that case *had fulfilled* all requirements. The Court went further, however, and in effect laid down procedural requirements for future cases to comply with *Mullane,* but stated in the quoted paragraph that these new procedural rules would not apply to prior adjudications. This was not saying that the constitutional requirements of due process in any case would not be fully enforced even if purported titles and claims would be upset. The Constitution is the law of the land regardless of the fact that certain claims may be upset by its enforcement. The *Bomford* opinion specifically recognizes the United States Supreme Court decisions commencing with *Mullane* stating "Oklahoma has long recognized the Mullane doctrine." In the instant case, the Court is asked simply to enforce the Constitution, and it should not withhold its ruling on the possibility that some claimants to other people's property might be upset. The *Bomford* case protected *judgments* of courts rendered before that opinion became final: the instant case affects *tax sales* and will have no upsetting effect on titles perfected by judgments.

The fact that Resale Tax Deeds may have been issued following the prescribed statutory procedure should have no validating influence on them if that statutory procedure violates the Constitution. If that argument were sound, State legislatures could enact any law they desired, even though unconstitutional, and there would be no constitutional protection available, because striking down the

unconstitutional law would upset interests which might be claimed thereunder. What happens to the Constitution then? Where is constitutional protection in such circumstances?

## CONCLUSION

With the facilities available to the County Treasurer at the time of the tax sale here under examination, it would have been a quick and simple procedure to determine who were the owners of the property being affected by the tax sale and to give them personal notice that their property was in jeopardy. Current law in other administrative procedures so requires, and in this age of instantaneous retrieval of information, it is not too much to require notice to all parties affected by such a serious matter as the taking of real property interests. Failure to give such notice renders the procedure void *ab initio*, leaving the parties exactly where they were. To apply a statutory limitation where notice has not been so given would be tantamount to a rejection of the Due Process Clause because it would place within the power of state legislatures the ignoring of constitutional rights by simply reducing the time limitation within which such rights may be asserted.

If the state action here in question receives approval by this Court, either on the main constitutional issue of the requirements of Due Process or on the subsidiary issue of limitations, it will be possible for several states to lower their standards for notice, since many already have provided for personal notice either within the administrative tax sale procedure or through a full judicial tax lien fore-

closure. Oklahoma's least strict requirements will become the model and perhaps will be extended into administrative or judicial procedures other than the tax sale procedure. That danger is not simply theoretical in view of the administrative complexity of modern government, tempting more and more toward "efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

The tax sale should be declared ineffective as to the severed mineral rights for want of notice to the owners thereof.

Respectfully submitted,

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September, 1973

**CERTIFICATE OF SERVICE**

I hereby certify that the following, who are all of the parties required by law to be served in the above case, were this day mailed three copies of the foregoing Reply Brief of Appellants, postage prepaid:

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Dated this ..... day of ....., 1973.

.....
William J. Legg

(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

# SUPREME COURT OF THE UNITED STATES

No. 72-922

Mary Louise Green Paschall et al., Appellants, *v.* Christie-Stewart, Inc., et al. } On Appeal from the Supreme Court of Oklahoma.

[November 19, 1973]

PER CURIAM.

In this case we noted probable jurisdiction, 411 U. S. 915 (1973), in order to consider whether the published notice provisions of the then applicable Oklahoma tax-sale statutes, Okla. Stat., Tit. 68, §§ 382 and 432b (1951), comported with due process of law guaranteed by the Fourteenth Amendment.[1] See *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 406 (1950). This was the only issue addressed by the appellate courts of Oklahoma[2] and by the parties in the Jurisdictional Statement and the papers responsive thereto filed with this Court.

After oral argument and upon our review of the record, it now appears that there might have been an independ-

[1] The ad valorem taxes in question were for the year 1952. The original tax sale took place in November 1953 and the resale in May 1956. Okla. Stat., Tit. 68, §§ 383 and 432 (1951). The statutes cited (§§ 382, 383, 432, and 432b) were repealed by Okla. Sess. Laws, 1965, c. 501, § 3, and replaced by corresponding provisions of the State's present Ad Valorem Tax Code, namely, Okla. Stat., Tit. 68, §§ 24312, 24313, 24329, and 24331 (1971).

[2] See *Christie-Stewart, Inc.* v. *Paschall*, 502 P. 2d 1265 (Okla. Sup. Ct. 1972). The earlier opinion of the Oklahoma Court of Appeals, Division 2, is not reported; it is reproduced in the Jurisdictional Statement, App. A, p. vii.

ent and, possibly, an unchallenged ground for the judgment of the state trial court, *viz.*, the running of the Oklahoma period of limitation for adverse claims.[3] If that should prove to be the case, any decision by this Court would be advisory and beyond our jurisdiction. *Murdock* v. *City of Memphis*, 20 Wall. 590, 636 (1874).

The judgment of the Supreme Court of Oklahoma is

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[3] The trial court's judgment read in part as follows:

"(2). The Court Further Finds, Orders, Adjudges and Decrees that from the date of the recording of said resale tax deed, on June 6, 1956, that said Grantees therein, the Cross-Petitioners, R. W. Garrett and R. H. Vaughn, have been in the open, continuous, visible, notorious, exclusive and hostile possession of said lands and premises, receiving all of the rents, profits and income therefrom, and that said contesting substituted party defendants, are further forever barred and precluded by the statute of limitations, from seeking to assert the invalidity of said resale tax deed, as provided by 12 O. S. 1961, Sec. 93 (3) and (6)." Jurisdictional Statement, App. A, p. xvii.

Okla. Stat., Tit. 12, § 93 (1961), reads:

"§ 93. Limitation of real actions.—Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter:

. . . . . .

"(3) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed . . . provided, nothing herein shall be construed as reviving any cause of action for recovery of real property heretofore barred nor as divesting any interest acquired by adverse possession prior to the effective date hereof.

. . . . . .

"(6) Numbered paragraphs 1, 2, and 3 shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of one (1) year from and after its effective date."

therefore vacated and the case is remanded to that court to consider whether the appellants preserved the right to challenge the trial court's determination that the State's statute of limitations is a bar to their mineral rights claim, and, if so, whether, under state law, the statute of limitations independently bars appellants' claim, irrespective of the constitutional adequacy of the tax-sale notice provisions of §§ 382 and 432b.[4] Cf. *Walker* v. *Hoffman*, 405 P. 2d 57 (Okla. Sup. Ct. 1965).

*It is so ordered.*

[4] Whether the alleged lack of constitutionally valid notice would preclude the running of the statute of limitations for an adverse land claim is a question that has not been presented to this Court or to the Oklahoma courts below. Cf. *Shroeder* v. *City of New York*, 371 U. S. 208, 213–214 (1962). We intimate no view on this issue.

# SUPREME COURT OF THE UNITED STATES

No. 72–922

Mary Louise Green Paschall et al., Appellants, *v.* Christie-Stewart, Inc., et al. } On Appeal from the Supreme Court of Oklahoma.

[November 19, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.

Appellants claim title to the mineral interests here in controversy through deeds recording the severed interests on the books of the Seminole County Clerk in 1926 and 1930. In 1952 the owner of the separate surface interest failed to pay ad valorem taxes and the county satisfied its tax claim by selling the entire fee to the appellees after "notice" through newspaper publication. The tax sale statutes did not require that notice be given to the mineral owners by way of personal service, mailing or posting and no such notice was attempted. In an action to quiet title appellants contended that, as record owners of the mineral rights, they were never given constitutionally sufficient notice of the tax delinquency proceedings and as to them the proceedings were invalid. See *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 406 (1950).

The trial court, finding the tax sale proceedings valid and finding appellants' attack on the tax sale deed barred by the statute of limitations, quieted title in appellees. The Oklahoma Court of Appeals reversed that judgment but was itself reversed by the Oklahoma Supreme Court, each court addressing itself expressly only to the constitutional claim. The Court today remands the case to determine whether appellants adequately preserved the

right to challenge the adverse trial court ruling on the statute of limitations issue and whether this may serve as an independent bar to the assertion of their claim.

It should first be noted that proper preservation of this issue in the state courts is a hurdle facing not the appellants but the appellees. The Oklahoma Court of Appeals quieted title in appellants and thus must necessarily have found not only that the tax sale was constitutionally infirm but that the appellants' claim was not time barred. The Oklahoma Supreme Court reversed that judgment and affirmed the judgment of the trial court after finding that "[*t*]*he* question for decision is whether the Oklahoma statutory procedure [complies] with due process of law." *Christie-Stewart, Inc.* v. *Paschall*, 502 P. 2d 1265, (Okla. Sup. Ct. 1972) (emphasis added). Whether appellees adequately raised the statute of limitations ground in objecting to the Court of Appeals judgment we do not know. What we do know is that the Oklahoma Supreme Court quieted title in appellees by rejecting appellants' constitutional claim. Either because the issue was not properly before the court or because decision on it was not necessary, the statute of limitations issue was not reached.

What faces this Court is thus a decision quieting title in appellees by rejecting appellants' federal constitutional claim. As the majority notes, this was the only issue addressed by the parties in the Jurisdictional Statement and the responsive papers filed with this Court. When a constitutional adjudication is not the only basis on which a state court judgment rests a review of that adjudication by this Court would be advisory since the judgment would rest on its independent grounds regardless of the outcome of our review. But the only issue before us in this case is a constitutional one since the only basis for the reversal below is the rejection of appellants'

constitutional claim. When a decision rests only on a constitutional determination, a review of that determination is dispositive of the correctness of the decision and is thus not advisory. I would therefore face the constitutional claim at this point.

DEC 11 1973
MICHAEL RODAK, JR., CLERK

In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

## No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
*Appellees.*

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OKLAHOMA

## PETITION FOR REHEARING

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# In the
# Supreme Court of the United States

OCTOBER TERM, 1972

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## No. 72-922

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MARY LOUISE GREEN PASCHALL, JAN PASCHAL HARDEN, JOHN N. PASCHALL, JR., THE FOURTH NATIONAL BANK AND TRUST COMPANY OF TULSA, OKLAHOMA, as Executor of the Estate of H. Grady Ross, Deceased, and ZELDA DANNA PASCHALL,

*Appellants,*

VERSUS

CHRISTIE-STEWART, INC., a corporation, R. W. GARRETT and R. H. VAUGHN,

*Appellees.*

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

---

## PETITION FOR REHEARING

---

The Opinion of the Court of November 19, 1973, vacates the judgment of the Supreme Court of Oklahoma and remands the case to that Court to consider whether the Appellants preserved the right to challenge the trial court's determination that the State's statute of limitations is a bar to Appellants' mineral rights claim, and if so, whether, under state law, the statute of limitations independently

bars Appellants' claim, irrespective of the constitutional adequacy of the tax-sale notice provisions.

By reason of certain documents contained in the case record not previously called to this Court's attention, Appellants respectfully pray for a rehearing and reconsideration of the above determinations, and a decision of the rights of the parties on the basis of the constitutional issue solely presented by this appeal; *i.e.*, whether Appellants' predecessors were afforded notice of the taking of their property in compliance with the Due Process Clause of the Constitution of the United States.

## BRIEF AND ARGUMENT

**A. Appellants properly preserved the right to challenge the trial court's determination that the State's statute of limitations is a bar to Appellants' mineral rights claim.**

In the Journal Entry of Judgment of October 27, 1969 (Jurisdictional Statement, App. B, p. xv), the trial court found, ordered and adjudged, *inter alia*, as follows:

> "(2). The Court Further Finds, Orders, Adjudges and Decrees that from the date of recording of said resale tax deed, on June 6, 1956, that said Grantees therein, the Cross-Petitioners, R. W. Garrett and R. H. Vaughn, have been in the open, continuous, visible, notorious, exclusive and hostile possession of said lands and premises, receiving all of the rents, profits and income therefrom, and that said contesting substituted party defendants, are further forever barred and precluded by the statute of limitations from seeking to assert the invalidity of said resale tax deed, as provided by 12 O.S. 1961, Sec. 93 (3) and (6)."

From that adjudication, an appeal was filed in the Supreme Court of Oklahoma in accordance with statutory procedure which necessitated the filing of a Petition in Error in the Supreme Court of Oklahoma, done on December 2, 1969. Notice of the appeal and designation of the record was filed in the trial court, and opposing parties were mailed a copy thereof, on December 9, 1969. The applicable statute authorizing this method of appeal is 12 Okla. Stat. 1961 (1969 Supp.) §990 and Rule 4 of the Supreme Court of Oklahoma. Rule 6 states: "On compliance with Rule 4, the appeal shall stand perfected."

The Petition in Error filed by Appellants in the Supreme Court of Oklahoma contains the following averment of error:

> "4. The lower court erred in finding and adjudicating that Defendants in Error R. W. Garrett and R. H. Vaughn have been in the possession of the oil, gas and other mineral rights of these Plaintiffs in Error in and under the above described land, from and after the recording of the above mentioned Resale tax deed.
>
> "5. The lower court erred in adjudicating that the possession asserted by Defendants in Error R. W. Garrett and R. H. Vaughn with respect to the above described land as a matter of law bars and precludes these Plaintiffs in Error from seeking to assert the invalidity of such Resale tax deed."

and in the prayer of such Petition in Error, the following appears:

> "WHEREFORE, Plaintiffs in Error pray that such judgments and orders may be reversed and set aside and that judgment may be rendered with regard to

each of the issues stated above in favor of Plaintiffs in Error as follows:

"(c) That Defendants in Error R. W. Garrett and R. H. Vaughn have never been in possession, either actual or constructive, of the oil and gas and other minerals underlying the above described land;

"(d) That the possession asserted by Defendants in Error R. W. Garrett and R. H. Vaughn with respect to the above described land as a matter of law does not bar or preclude Plaintiffs in Error from asserting the invalidity of the Resale tax deed above mentioned, or any of their respective rights in and to the oil and gas and other minerals in and under such land."

The Brief of Plaintiffs in Error filed on appeal in the State court, contained, on page 5, the following paragraph with regard to the possession which might be asserted for purposes of the statute of limitation:

"It is the testimony in this case that the tax sale purchasers at the Resale of 1956 filed their deed and took possession of the surface of the land through a tenant, but they made no attempt to take possession of the minerals thereunder either by executing a lease or physically exploring for minerals under the land. This was the status until Christie-Stewart, Inc. prevailed upon them to execute the oil and gas lease of 1963. Thereafter, Christie-Stewart, Inc. also obtained an oil and gas lease from the Paschalls and Mr. Ross and this action was filed in 1965. It cannot be argued therefore that any possession of the minerals was obtained by the tax title claimants prior to this case coming to issue, since only the surface owner's name was included in the Resale publication notice and only the surface was actually possessed thereafter by the tax sale claimants."

The Defendants in Error failed to challenge that proposition in their Brief filed in the State appellate court and made only the following statement on page 7 with regard thereto:

> "It should also be noted that counsel's argument that such Resale Tax Laws now in effect are violative of the Due Process Clause of the Constitution . . . would hold invalid the applicable Statute of Limitations with reference to such Tax Deeds (12 O.S.A. 93) . . ."

The import of that statement is not to assert the defense of the statute of limitation but is a challenge to the Due Process argument as affecting the Oklahoma statute of limitation.

It can be clearly seen from the foregoing that Appellants at every point in the appeal "preserved the right to challenge the trial court's determination that the State's statute of limitations is a bar to their mineral rights claim" and that it was the Appellees who failed to take up the matter and assert the bar. The Petition in Error, the Brief of Plaintiffs in Error, and the Brief of Defendants in Error, all filed in the Oklahoma appellate courts, are a part of the record forwarded to, and now on file in, the Supreme Court of the United States, to which the Court's attention is invited.

**B. The Appellants, under state law, are not independently barred by the statute of limitations, irrespective of the constitutional adequacy of the tax-sale notice provisions.**

With regard to the question of whether the Supreme Court of the United States should itself give weight to the applicability of the statute of limitations, we invite the Court's attention to the treatment of this matter commencing at (2) on page 8 of the Reply Brief of Appellants filed herein in September, 1973, and continuing to the bottom paragraph on page 13. The claim that the judgment against Appellants failed to provide equal protection of the laws was first made in the Petition in Error, paragraph (b), filed when the case was originally appealed from the trial court's judgment. It was made again in the Response to Motion to Dismiss and/or Affirm, page 4, filed by Appellants in March, 1973. It was again made and argued in both the Brief and Reply Brief of Appellants filed herein.

It should be noted that the Appellants challenged the applicability of the statute of limitations at every point of the state appellate procedure as indicated above. The Oklahoma Court of Appeals was presented a Petition in Error and a Brief of Plaintiffs in Error that raised the issue, but the court in its opinion dealt only with the constitutional issue and reversed the trial court with respect to the mineral rights, thus granting judgment to Appellants. At that point, Appellees filed a Petition for Rehearing on December 16, 1971, in the Oklahoma Court of Appeals, specifically raising the question of the applicability of the statute of limitations:

> "(a) That the Court failed to apply the provisions of Title 12, Oklahoma Statutes Section 93(3), which

> prohibits the bringing of an action for the recovery of oil property sold for taxes, within five (5) years after the date of the recording of the Tax Deed."

That Petition was denied by the Oklahoma Court of Appeals on February 1, 1972. From this action it is clear that the Oklahoma Court of Appeals had before it the question of the applicability of the statute of limitations and specifically ruled against it, leaving stand its opinion dealing exclusively with the constitutional issue of Due Process.

Appellees then filed their Petition for Certiorari "for the reasons stated in the Petition for Rehearing to the Court of Appeals." It is thereby conclusively shown of record that the Oklahoma Supreme Court had before it the question of whether the statute of limitations applied. Instead of deciding the case on that basis, the opinion of the Oklahoma Supreme Court dealt exclusively with the constitutional issue of Due Process, without one word concerning the statute of limitations.

Upon the decision of the case by the Oklahoma Supreme Court, Appellants filed their Jurisdictional Statement here in December, 1972, treating only of the one issue on which the Oklahoma Supreme Court decision rested. If the question of the applicability of the statute of limitations had been important to Appellees, their Motion to Dismiss and/or Affirm filed in February, 1973, should have concentrated on that proposition, even though neither the Oklahoma Court of Appeals nor the Supreme Court of Oklahoma considered the statute of limitations of sufficient applicability to comment thereon. Instead, Appellees' Motion to Dismiss and/or Affirm deals only with the constitutional

issue of Due Process. Appellants' Reply to such Motion likewise dealt only with the constitutional issue. The above mentioned pleadings and other filings are all contained in the record forwarded to, and now on file in, the Supreme Court of the United States, to which the Court's attention is invited.

It is therefore clear not only that the Oklahoma Court of Appeals and the Supreme Court of Oklahoma had before them the question of the applicability of the statute of limitations and refrained from basing their decisions thereon, but also that the Appellees refrained from basing their case upon that proposition. That was the posture of the case when probable jurisdiction was noted here on April 2, 1973. The only issue facing the Supreme Court of the United States, the only issue deemed sufficiently important to comment upon by the two lower appellate courts and the parties to the appeal here, was the ultimate decision quieting title to the mineral rights in Appellees and rejecting Appellants' federal constitutional claim. The lower judgment rests only on that rejection. An adjudication here on that issue would therefore not be advisory, but on the contrary would be fully dispositive of the case since there is no other issue before this Court or ground upon which the lower judgment rests.

## CONCLUSION

Appellants respectfully call the Court's attention to the documents referred to above, contained in the record filed herein, and urge the Court to reconsider its order made in its opinion of November 19, 1973, and to decide the case on the sole issue facing the Court and upon which the lower appellate courts' decisions were made, that being the constitutional claims of failure of due process and denial of equal protection of the law.

Respectfully submitted,

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*Attorneys for Appellants*

December, 1973

## CERTIFICATE OF GOOD FAITH

William J. Legg does hereby certify that the foregoing Petition for Rehearing is presented in good faith upon the grounds stated therein and not for delay.

William J. Legg

## CERTIFICATE OF SERVICE

I hereby certify that the following, who are all of th parties required by law to be served in the above cas were this day mailed three copies of the foregoing Petitio for Rehearing, postage prepaid:

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Dated this ..... day of December, 1973.

.....

William J. Legg